

CERTIFIED COPY (Rev. April 1948)

D. C. Form No. 38

United States of America  
 } ss:  
 NORTHERN DISTRICT OF ILLINOIS

17645

I, ELBERT A. WAGNER, JR., Clerk of the United States District Court  
 for the NORTHERN District of ILLINOIS, do hereby certify that the annexed  
 and foregoing is a true and full copy of the original docket entries in the cause entitled  
 UNITED STATES OF AMERICA vs. DINAS CAMPOS\_SERRANO 68 CR 732.

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and

affixed the seal of the aforesaid Court at

this 23rd day of MAY

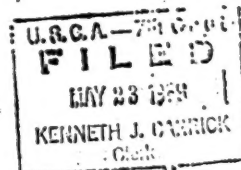
A. D. 19 69

ELBERT A. WAGNER, JR.

Clerk

By Charles A. Anderson

Deputy Clerk.



JUDGE LYNCH DOCKETED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

68CR 732 FILED

UNITED STATES OF AMERICA

vs.

DIMAS CAMPOS-SERRANO  
a/k/a DIMAS VARGAS-GARCIA

No.

Violation: Title 18, United  
States Code, Section 146  
U.S.C.

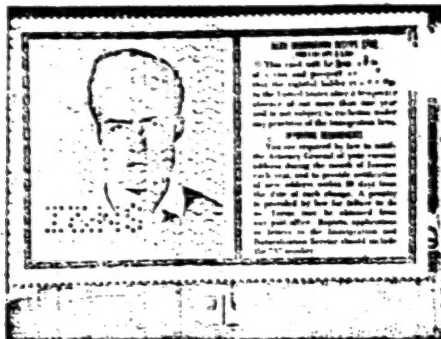
87 DEC 5 PM 3 10

The DECEMBER 1968 GRAND JURY charges:

That on or about November 19, 1968, at Chicago, in the Northern  
District of Illinois, Eastern Division,

DIMAS CAMPOS-SERRANO  
a/k/a DIMAS VARGAS-GARCIA

defendant herein, knowingly and intentionally possessed a falsely made,  
altered, forged and counterfeited alien registration receipt card, a  
document required for entry into the United States, of the tenor and  
description, as follows:



(FRONT)

Do not to transfer this			
VARGAS-GARCIA, DIMAS			
ALL 713 099		REGISTRATION	
Has been duly registered according to law and been admitted to the United States as an immigrant of			
PORT	DATE OF ENTRY	AGE	NO. OF YRS. IN BIRTH
LAR	03-17-65	D-1	03-17-49 M
82	Consular Office of Immigration and Naturalization		
UNITED STATES DEPARTMENT OF JUSTICE			
It is hereby declared that the above is a true and correct copy of the original as filed in the files of the Department of Justice.			

(REAR)

and the defendant then knew that the said alien registration receipt card was falsely made, altered, forged and counterfeited; in violation of Title 18, United States Code, Section 1546.

A TRUE BILL:

Edgar F. Feiertag  
FOREMAN

Marcus A. Roca  
UNITED STATES ATTORNEY

DRM:mls

Form DJ-165  
(Ed. 2-7-66)

No. 732

**UNITED STATES DISTRICT COURT**

**NORTHERN District of ILLINOIS**

**EASTERN Division**

**THE UNITED STATES OF AMERICA**

**vs.**

**DINAS CAMPOS-BERGAMO a/k/a**

**DINAS VARGAS-GARCIA**

**INDICTMENT**

T. 18. U.S.C. § 1546

A true bill,

*Edgar F. Feintag*Filed in open court this 5thof December A.D. 1968*Albert A. Wagner Jr.*

Dall, § \_\_\_\_\_

GPO 902-082

FILED

1968 DEC 5 PM 3 10

CLERK  
U.S. DISTRICT COURT



*Docketed*

[Filed Jan. 13, 1969, at — o'clock —]

Elbert A. Wagner, Jr., Clerk.]

No. 68 CR 732

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DIMAS CAMPOS-SERRANO, DEFENDANT

*Motion To Dismiss*

The defendant DIMAS CAMPOS-SERRANO, through his appointed counsel, moves to dismiss the indictment.

1. The defendant moves to dismiss the indictment for failure to state an offense and the improper application of the statute (18 U.S.C. 1546) to the Alien Registration Receipt Card (Form I-151). The statute 18 U.S.C. 1546 penalizes the possession of "any immigrant or non-immigrant visa, permit, or other document required for entry into the United States." By its own regulations, the Immigration and Naturalization Service has characterized the Alien Registration Receipt Card (Form I-151) as *evidence of registration*. 8 C.F.R. 264.1 (Jan 68). Also, to treat the possession of an allegedly altered or forged Alien Registration Receipt Card as a violation of 18 U.S.C. 1546 nullifies other statutes regulating the improper entry of aliens into the United States. In 8 U.S.C. 1325 any alien who obtains entry to the United States by wilfully false or misleading representation shall, for the first commission of any such offense, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars or by both. In 8 U.S.C. 1306(d) there is a penalty provision for the counterfeiting of an Alien Registration Receipt Card. This card should be more properly considered as evidence of lawful admission into the United States consummated after entrance, and therefore would not be qualified as a document required for entry. If there is any well-founded doubt, it should be

resolved in favor of the defendant against a felony violation of 18 U.S.C. 1546. See *McFarland v. United States*, 19 F. 2d 807 (6th Cir. 1927), involving this same statute. In 18 U.S.C. 1546 the statute is directed at those persons using false documents to bring about their lawful initial entrance into the United States, and the statute has no application to a document whose primary purpose is to acknowledge the registration of an immigrant and to secondarily identify him for purposes of reentry. For a case discussing the distinction between original entry and reentry, see *Lau Ow Bew v. United States*, 144 U.S. 47 (1892).

2. The defendant claims under the equal protection clause and due process clause of the Fourteenth Amendment and the speedy trial provision of the Sixth Amendment, that he will be unduly prejudiced by the delay in the return of the indictment against him. The defendant was arrested in Chicago, Illinois, on 19 November 1968 for the offense now charged and has remained continuously in confinement. The indictment in this case was returned on 10 December 1968, and counsel for the defendant was first appointed on 16 December 1968. At the time the defendant was arrested certain material witnesses were arrested with him, and since that time they have been deported to Mexico. Without access to these witnesses and the use of their testimony, he will be deprived of the opportunity to obtain a full hearing on certain motions filed in this case asserting violations of his constitutional rights. The defendant plans to make every effort to locate and obtain testimony of these witnesses, but if he is deprived of their testimony, it will have been the unnecessary delay in furnishing him with counsel and bringing this case on for trial. For the reason of the violation of his constitutional rights and appeal to the discretion of the court under Rule 48(b), Federal Rules of Criminal Procedure, the defendant requests that this indictment be dismissed.

3. That the defendant was arrested in his apartment on 19 November 1968 for the charged offense, and at the same time other persons for whom the same or similar charges could have been brought were also arrested by federal agents of the Immigration and Naturalization Service. That the selection of Dimas Campos-Serrano for prosecution of this felony offense was an arbitrary and a discriminatory act of the federal law enforcement agency which denied the defendant his right as

a person under the Fifth Amendment to the due process in the fair and impartial enforcement of federal laws.

For the above reasons, the defendant moves to dismiss the indictment with prejudice.

Respectfully submitted,

Dated 13 January 1969.

John J. Cleary,

JOHN J. CLEARY,

Attorney for Defendant, 1155 East 60th Street,  
Chicago, Illinois 60637. 684-2727.

*Docketed*

[Filed Jan. 13, 1969, at — o'clock —]

Elbert A. Wagner, Jr., Clerk.]

In the United States District Court, Northern District of  
Illinois, Eastern Division

No. 68 CR 732

UNITED STATES OF AMERICA, PLAINTIFF

v.

DIMAS CAMPOS-SERRANO, DEFENDANT

*Motion To Suppress*

The defendant, DIMAS CAMPOS-SERRANO, through appointed counsel, now moves to suppress all evidence (including but not limited to the alien registration card with No. A14 718 099 and all written and oral statements of the defendant) consequent to his unlawful arrest by agents of the Immigration and Naturalization Service on 19 November 1968 in Chicago, Illinois.

1. It is alleged in support of this motion to suppress evidence that two agents of the Immigration and Naturalization Service on 19 November 1968 in the early morning hours arrested Miguel Rico at his place of work, and these federal agents directed Miguel Rico to return to his apartment to secure his clothing because he was being taken to a place of confinement. Miguel Rico had allegedly been illegally working at the Rulon

Company, at West Carol Street and Ashland Avenue in Chicago.

2. With their prisoner Miguel Rico these two federal agents entered the apartment where the defendant Campos-Serrano was lawfully residing at 2251 S. California on the second floor, front.

3. These agents conducted a search of the premises for other persons and examined the contents of dressers, drawers, and closets.

4. That the defendant Campos-Serrano was present in the apartment when the agents arrived and that neither he nor Miguel Rico gave any consent to their entrance into the apartment at his time.

5. That one of the two agents demanded the identification of the defendant Campos-Serrano who in response to this demand produced the alien registration receipt card which is now the subject of this indictment.

6. That after examining the identification one or both of these federal agents left the apartment but later returned and advised the defendant that the card he had in his possession which had previously been shown to them was false.

7. That these agents failed to advise the defendant Campos-Serrano of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and further did not explain that presentation of this document would again incriminate in violation of his rights under the Fifth Amendment.

8. That after an extensive discussion involving penetrating examination by these agents, the defendant acknowledged that the alien registration receipt card was false.

9. That at that time he was taken into custody with other persons who had been arrested at this building.

10. That on the following day, 20 November 1968, he appeared before an Immigration and Naturalization Service hearing officer and was, for the first time, then advised of his constitutional rights at the time he made this written statement, but that his written statement was nothing other than the product of the first illegal statement, and that he was not advised that his oral incriminating statement to the agents on 19 November 1968 was totally incompetent, inadmissible evidence and could not be used against him.

11. That the defendant has no criminal record and is unaware

of criminal procedures, and further that defendant is unable to speak the English language.

Therefore, pursuant to Rule 41, Federal Rules of Criminal Procedure, the defendant moves to suppress all evidence flowing from the unlawful search without a warrant of the apartment at 2251 S. California, Chicago, Illinois, and also moves to suppress this evidence on the basis that the arrest was made without probable cause, all in violation of the defendant's rights under the Fourth Amendment, United States Constitution.

Dated: 13 January 1969.

Respectfully submitted,

JOHN J. CLEARY,  
Attorney for Defendant,  
1155 East 60th Street,  
Chicago, Illinois 60637. 684-2727.

*Docketed*

[Filed Jan. 13, 1969, at — o'clock —, Elbert A. Wagner, Jr.,  
Clerk.]

In the United States District Court, Northern District of  
Illinois, Eastern Division

No. 68 CR 732

UNITED STATES OF AMERICA, PLAINTIFF

v.

DIMAS CAMPOS-SERRANO, DEFENDANT

*Motion To Suppress Confession and Statements*

The defendant through his appointed counsel, moves to suppress all oral incriminating statements and written confessions or incriminating statements made by the defendant CAMPOS-SERRANO in the investigation of this case.

In support of this motion the defendant alleges:

1. The defendant DIMAS CACPOS-SERRANO, who speaks only Spanish, was on 19 December 1968 in his apartment at 2251 S. California, Chicago, Illinois, interrogated and questioned concerning a fraudulent immigration document without having been properly advised of his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966);

2. That he did not intelligently, voluntarily, and understandingly waive his right to remain silent or the right to have the assistance of appointed counsel during the interrogation;

3. That at the time of the interrogation these federal agents had substantially deprived the defendant Campos-Serrano of his liberty;

4. That these agents secured from the defendant Campos-Serrano at the time of his arrest and after their interrogation an incriminating statement concerning the possession of this allegedly fraudulent immigration document;

5. That on 20 November 1968 the defendant Campos-Serrano executed a written statement or confession but was for the first time advised of his constitutional right to remain silent and have the assistance of appointed counsel during the interrogation at that time;

6. That the defendant Campos-Serrano speaks only Spanish and that the above statement secured from him was in Spanish;

7. That the written statement executed on 20 September 1968 by the defendant Campos-Serrano was a direct product and consequence of his prior oral admission or statements, which had become tainted and thereby inadmissible as a result of the failure to give the proper warning prior to the procuring of the first oral statement;

8. That the production of the alien registration receipt card to the federal agents of the Immigration and Naturalization service on 19 November 1968 in response to their direct questioning constituted testimonial evidence, which is protected by the Fifth Amendment, and for their failure to advise the defendant of his Fifth Amendment rights in the production of that identification card, the suppression of the card is required;

9. The defendant Dimas Campos-Serrano was arrested in the early morning hours of 19 November 1968 a Sunday, and on Monday was examined before an Immigration and Naturalization Service investigator, J. T. McLennan, concerning the present offense, a felony violation of 18 U.S.C. 1546, but at no time was he brought before the United States Commissioner on this federal felony charge. His first court appearance, where he first obtained the assistance of counsel, was on 16 December 1968 before the Honorable Richard B. Austin at which time the defendant entered a plea of not guilty. Both Rule 5(a), Federal Rules of Criminal Procedure, and 18 U.S.C. 1357(a)(4) direct that the person arrested for a felony offense shall be taken with-



out unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States. The statement made by the defendant Campos-Serrano during this period of unreasonable delay deprived the defendant of the effective assistance of counsel at a time when it would have been most helpful and violated the procedures set down for administration of these criminal offenses. The duty for bringing this defendant immediately before a judicial officer has been set forth in *United States v. Valente*, 155 F. Supp. 577 (D.C. Mass. 1957), which held:

If the arrest is "for felonies" the usual obligation to proceed without delay before a committing magistrate applies. Sec. 1357(a)(4). The mere fact that the officer could properly examine as to status did not give him a roving commission. His examination of the defendant on the subject of a felony without attempting to comply with Rule 5(a), and the introduction of the resultant (confession) at a subsequent criminal trial, was a flagrant disregard of defendant's rights. 155 F. Supp. 577, 579.

For the above reasons, the defendant moves to suppress all oral and written statements of the defendant Campos-Serrano in this proceeding.

Respectfully submitted,  
Dated: 13 January 1969.

JOHN J. CLEARY,  
Attorney for Defendant, 1155 East 60th Street,  
Chicago, Illinois 60637. 684-2727.

1 In the United States District Court, Northern District  
of Illinois, Eastern Division

No. 68 CR 732

UNITED STATES OF AMERICA

vs.

DIMAS CAMPOS-SERRANO, DEFENDANT

Transcript of proceedings had in the hearing of the above-entitled cause before the Hon. William J. Lynch, one of the

judges of said court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Tuesday, February 4, 1969, at the hour of 2:00 o'clock p.m.

Present: Hon. Thomas A. Foran, United States Attorney, by Mr. D. J. Mackenzie, Assistant U.S. Attorney, on behalf of the Government; Mr. John J. Cleary, on behalf of the defendant.

Also present: Mrs. L. W. Hurney, District Director, Immigration and Naturalization Service.

2 The CLERK: *United States v. Dimas Campos-Serrano*, 68 CR 732.

Mr. MACKENZIE: Your Honor, the Government is ready to proceed.

The COURT: Very well.

Mr. CLEARY: Good afternoon, your Honor. I would like to beg the indulgence of the Court. My interpreter has not yet arrived.

The COURT: Very well, we will wait for him.

Mr. CLEARY: The point is I think we can start the hearing without the interpreter.

The COURT: Does the defendant understand English?

Mr. CLEARY: No, he does not. He understands only Spanish.

Mr. MACKENZIE: Your Honor, the Government does have an interpreter present in the courtroom. It was our intent, though, to call this individual as a witness in the case.

The COURT: He will not be able to interpret for the defendant.

Mr. CLEARY: Right, I need someone other than the INS personnel. I just was on the telephone now trying to locate someone. I was promised someone would be here.

3 They had someone here yesterday for me. It is the Urban Progress Center at 1900 West Division.

The COURT: Does he understand any English?

Mr. CLEARY: No, and my Spanish is terrible. I was thinking possibly, your Honor, and I think I could speak for the defendant, I could relate any event that has to be related to him, if we could at least start the hearing to get the background—

The COURT: All right, let's proceed then.

Mr. MACKENZIE: As long as we are proceeding on that representation the Government has no objection.

The COURT: All right, proceed.



Mr. CLEARY. At this time, your Honor, I would like to call Agent Jacobs from the Immigration and Naturalization Service.

Harold E. Jacobs, called as an adverse witness herein by the defendant, having been first duly sworn, was examined and testified as follows:

# DIRECT EXAMINATION

By Mr. CLEARY:

4 Q. Would you state your name for the record, please.

A. Harold E. Jacobs.

Q. How do you spell your last name, for the record, please?

A. J-a-c-o-b-s.

Q. What is your business or occupation, sir?

A. I am an investigator.

Q. For whom, sir?

A. The United States Immigration and Naturalization Service.

Q. When were you first employed by that organization?

A. In March 1960.

Q. Were you in that capacity on 19 November 1968?

A. I was.

Q. Had you ever heard of a person by the name of Miguel Rico?

A. I have.

Q. When did you first learn of this person?

A. When he was arrested at his place of employment.

Q. Do you know who arrested Miguel Rico at his place of employment?

5 A. I do not know. There were several of us.

Q. Do you know who arrested Miguel Rico at his place of employment?

A. I do not know. There were several of us.

Q. Did you arrest Miguel Rico?

A. I don't know whether I did personally or not.

Q. Do you know what day Miguel Rico was arrested on?

A. I don't remember—it was November 19, yes, 1968.

Q. Do you have any records in your possession that might assist you in refreshing your recollection to determine whether or not you were the agent that arrested Miguel Rico?

A. No, sir, I do not.

Q. Had you ever made any writings or reports concerning the arrest of Miguel Rico?

A. No, I didn't.

Mr. CLEARY. At this time, your Honor, I would ask permission to excuse this witness and call another, with the right of recall if I can determine he is one of the arresting agents.

6 The COURT. Any objection?

Mr. MACKENZIE. May I have one second, your Honor?

The COURT. Yes.

By Mr. CLEARY:

Q. Are you familiar with what is called a task force arrest?

A. Yes, I am.

Q. Would you tell the Court what a task force arrest is?

A. That involves, your Honor, several investigators that are—that go to a particular area to make several arrests.

Q. When are these task force arrests planned? Is there any prior planning involved?

A. Yes, usually the day before.

Q. And what type of plans or preparations are made?

A. Well, the preparations are such that according to the information that has been received—that usually determines the number of officers that will be needed.

7 Q. And by information that you would receive, you would receive, for example, names of certain possible violators of immigration laws, is that not correct?

A. That's correct.

Q. What type of information would you receive about these violators?

Mr. MACKENZIE. Your Honor, I fail to see the relevancy of this line of questioning to the defendant in this case.

The COURT. Is it an attempt to be able to get this witness to be able to identify the defendant here?

Mr. CLEARY. I am trying to get the procedure because I believe that the arrests for which this defendant was a product of, was a task force arrest, and I think I have a right to go into the procedure or planning surrounding a task force arrest.

The COURT. Well, I don't see the relevancy of it, but I will let you proceed with it at the moment.

Your objection is overruled.

By Mr. CLEARY:

Q. What type of transportation equipment do you use?

A. We have cars, automobiles.

8 The COURT. Of course you might go with it—was he present when the defendant was arrested.

Mr. CLEARY. He doesn't remember, your Honor.

The COURT. You don't remember that?

The WITNESS. I was present when he was arrested, yes, sir.

The COURT. You see, I used the other question. You used the one, did he make the arrest, but was he present when the defendant was arrested.

Mr. CLEARY. Thank you, your Honor.

The COURT. All right.

By Mr. CLEARY:

Q. You say you were present when the defendant was arrested.

Was this a task-force arrest at that time?

Mr. MACKENZIE. Your Honor, the question that was originally presented to the witness was, was he present when Miguel Rico was arrested.

9 Mr. CLEARY. Yes.

The COURT. Yes.

Mr. MACKENZIE. Well, did he arrest Miguel Rico? Miguel Rico is not the defendant in this case.

The COURT. I beg your pardon. Strike it from the record and you may begin again.

Mr. CLEARY. All right, your Honor.

By Mr. CLEARY:

Q. You do not know whether or not you were present when Miguel Rico was arrested, is that not correct?

A. I was present at the location, yes.

Q. Do you know where Miguel Rico was arrested?

A. I can't recall exactly.

Q. Do you remember if it was his place of employment?

A. It was his place of employment, yes.

Q. To your knowledge now you were present when he was arrested?

A. Yes, I was.

The COURT. Just a moment, Mr. Cleary. Will you come up here?

Mr. District Attorney, will you come too?

10 (The following proceedings were had at the side bar, out of the hearing of the witness:)

The COURT. Mr. Cleary, you have an important telephone

call. I believe it is your interpreter. You can take it in my chambers.

Mr. CLEARY. Thank you very much, your Honor.

(A short recess was taken, after which the following proceedings were had in open court, in the presence and hearing of the witness.)

Mr. CLEARY. Thank you, your Honor, My interpreter is on the way.

The COURT. All right, you may proceed.

By Mr. CLEARY:

Q. To the best of your recollection, Miguel Rico was arrested at his place of employment, is that not correct?

A. Yes.

Q. That is somewhere here in the City of Chicago?

11 A. Yes.

Q. Do you have any idea where in the City of Chicago?

A. It was at the Roulon Corporation.

Q. The Roulon Corporation?

A. Yes.

Q. And was this arrest of Miguel Rico part of a task force arrest?

A. It was.

Q. Do you have any idea or recollection of the number of people scheduled to be arrested on that day?

A. No.

Mr. MACKENZIE. Your Honor, I object to that question also.

The COURT. Let me have it, please, Mr. Reporter.

(The last question and answer were read by the reporter.)

The COURT. Yes?

Mr. MACKENZIE. I object, your Honor, to the question, does he have any idea of the number of individuals scheduled to be arrested.

The COURT. Sustained.

12 By Mr. CLEARY:

Q. Do you have any idea as to the number of individuals arrested on that date?

A. I can only give an estimate.

Q. Your estimate, please, sir.

A. I would say fifteen or sixteen.

Q. Fifteen or sixteen?

A. Yes.

Q. Do you remember in which order Mr. Miguel Rico was?

A. No, I do not.

Q. Do you remember the time of day which he was arrested?

A. Approximately 8:00 o'clock in the morning, a.m.

Q. Now, do you remember possibly the other agents who were present at the time he was arrested?

A. Yes.

Q. What are the names of those agents?

A. Adolphus B. White, Jr., Clark Burrow—

Q. What was that last name?

A. Burrow.

Mr. MACKENZIE. Will you raise your voice just a little bit, please?

13 The COURT. Yes, please.

Al White, and the next one please.

Mr. CLEARY. It was Burrow, I believe.

By The WITNESS:

A. —Clark Burrow, John McLennon, Paul—excuse me, Gene Lewis, Bruce Peterson, Bruce Ferguson and John Coulson.

By Mr. CLEARY:

Q. To your knowledge how many of these agents were present at the scene of arrest of Miguel Rico?

A. All of them.

Q. Including yourself that would be six agents?

A. I believe—I must have left one out. There should have been eight.

Q. Eight agents?

A. Yes.

Q. Did you have an arrest warrant for Miguel Rico?

A. We did not.

Q. Would you describe the arrest of Miguel Rico to the Court?

A. I cannot.

Q. Do you remember—

14 The COURT. Yes, counselor?

Mr. MACKENZIE. Your Honor, I still fail to see the relevancy of this line of questioning.

The COURT. I cannot see it.

Mr. CLEARY. If your Honor would allow, I can just possibly point it out.

The COURT. I will allow it, but I cannot see the relevancy.

Mr. CLEARY. The relevancy is that the INS agent arrested Miguel Rico.

The COURT. Well, he doesn't know anything about it.

Mr. CLEARY. No, but the point is I am just trying to find out what were the possibilities. Thereafter Miguel Rico was transported back to his apartment and at that apartment, after gaining entry, presumably through Miguel Rico, they arrested the defendant in this case.

Now, I have to understand under what context Miguel Rico was arrested in order to determine the search of the premises of this defendant.

The COURT. You can do so, if you have got the  
15 right agent.

Mr. CLEARY. Well, I am trying to establish that.

The COURT. All right, go ahead with it.

By Mr. CLEARY:

Q. After the arrest of Miguel Rico do you know what you or the other agents did with Miguel Rico?

A. He was taken to his residence.

Q. At that time?

A. Soon after.

Q. At any time did any of those agents or yourself secure a search warrant?

A. No.

Q. Were you one of the agents that entered his premises?

A. I was.

Q. About what time did the defendant—did Miguel Rico and the immigration agents enter his apartment?

A. I can't recall exactly. Perhaps 8:45 a.m.

Q. Do you remember where his apartment was located?

A. I can't give an exact address.

16. Q. Just approximately.

A. Well, he lives on the South Side. I don't recall the exact address.

Q. Would you describe the building?

A. It was an apartment building.

Q. And where was the apartment of Miguel Rico located?

A. On the first floor.

Q. On the first floor. How many agents entered with Miguel Rico?

A. Two.

Q. Another agent besides yourself?

A. That is right.

Q. What was his name?

A. Clark Burrow.

Q. Who entered the apartment first, Miguel Rico or the immigration agent?

A. Miguel Rico.

Q. Did he have to use a key to unlock the door?

A. I believe he knocked and the door was opened.

Q. Was there any response, without going into the words, to the knock, such as, "Who's there?"

A. I don't recall.

17 Q. The door was opened. Do you know by whom?

A. By another individual.

Q. Do you know that other individual?

A. Yes, I do.

Q. Do you know him by name?

A. Yes, I do.

Q. What is his name?

A. He's—it's Mr. Campos.

Q. Do you see that individual in court?

A. I do.

Q. Did Miguel Rico enter the apartment?

A. He did.

Q. Did you and the other agent enter the apartment?

A. We did.

Q. Would you describe your activities upon immediately entering the apartment?

A. Miguel Rico proceeded to gather his things, his property, his clothing.

Investigator Burrow watched him do this and I talked to Mr. Campos.

Q. Did at any time you or Agent Burrow—

The COURT. Just a moment, come up here.

This is off the record.

18 (Here followed a discussion had off the record.)

The COURT. This court will take a brief recess.

(A short recess was taken.)

Mr. CLEARY. Your Honor, my interpreter is now present.

The COURT. Very well, you may sit back of him there.

All right, Mr. Cleary.

Mr. CLEARY. Thank you very much, your Honor.

The COURT. Now let me have the name, for the record, of the interpreter.

The INTERPRETER. Actelina LaPorte, A-c-t-e-l-i-n-a L-a-P-o-r-t-e.

The COURT. She better be sworn, Mr. Johnson.

You understand English, do you?

The INTERPRETER. Yes, sir.

The COURT. Mr. Clerk, will you administer the usual oath?

The CLERK. From English to Spanish and Spanish to English?

19 The COURT. Yes. Raise your hand, please.

The CLERK. You do solemnly swear to interpret the oath to be administered to the defendant from the English to the Spanish language, the questions that are propounded to him from the English to the Spanish language, and his answers from the Spanish to the English, and a true interpretation to make, so help you God?

The INTERPRETER. I do.

The COURT. All right, now you may be seated. Take the last chair there.

All right, Mr. Cleary.

By Mr. CLEARY:

Q. Was there anyone else present in the apartment at the time of your entry besides yourself, the other agent, Miguel Rico and the defendant?

A. There were none that I recall.

Q. At any time did you look into the closets or drawers?

A. No.

Q. In that apartment?

A. No.

20 Q. At any time did Agent Burrow look into the closets or drawers of that apartment?

A. No, he didn't.

Q. At any time did you or Agent Burrow ask about other tenants or persons in that apartment?

A. Not that I recall.

Mr. MACKENZIE. Your Honor, are Mr. Cleary's questions directed to the witness here, covering the actions of Mr. Burrow and the agent, or are you inquiring as to whether the agent here did the acts that you sought?

Mr. CLEARY. I think he answered my questions. I asked both what he did and what Burrow did.

The COURT. He did.



Mr. MACKENZIE. Well, I object to the answers that the witness made with respect to Agent Burrow. There is no foundation to determine whether he was able to view Mr. Burrow's actions at the time.

The COURT. Well, if he said he knew—overruled, you may proceed.

Speak up, will you please, sir, so that counsel over here will hear you.

The WITNESS. Yes, your Honor.

21 The COURT. All right.

By Mr. CLEARY:

Q. You approached the defendant in this case, is this not correct?

A. Yes, sir, I did.

Q. What did you say to him, if anything?

A. We had already identified ourselves when we entered.

Q. Was the other agent present in the capacity—well, was he present, close by at the time you interviewed this defendant?

A. Yes, he was.

Q. How did you identify yourself to this defendant?

A. I showed him my credentials and told him who I was.

Q. In what language did you speak?

A. In Spanish.

Q. What words did you use to identify yourself?

A. I told him that I was an official of the Immigration Service.

Q. What did you ask him, if anything?

A. I asked him where he was from.

22 Q. What was the reply, if anything?

A. He said Mexico.

Q. What did you ask him, if anything, at that time?

A. I asked him under what status he was in the United States.

Q. What was his reply, if any?

A. He said he was a resident alien.

Q. What did you ask him, if anything, at that time?

A. I asked him for proof.

Q. Was that the word you used, "proof"?

A. Yes.

Q. Did you have any reason to believe that he was not properly a resident of the United States?

A. At the time that I asked him for proof?

Q. Yes.

A. No.

Q. What did he do, if anything, in response to your question?

A. He produced a form which we call I-151.

Mr. CLEARY. At this time I would like the reporter to mark this as Defendant's Exhibit 1, for identification.

23 (Said document was marked Defendant's Exhibit 1, for identification.)

● By Mr. CLEARY:

Q. At this time I show you a document marked Defendant's Exhibit 1, for identification, and ask if you recognize that.

A. I do.

Q. Is that the card produced by the defendant at the time your interview took place?

A. Yes, sir, it is.

Q. Did you examine that card, sir?

A. Yes, I did.

Q. Did you copy down any information from that card?

A. I did not.

Q. Did any further questioning take place after he produced this card?

A. Yes.

Q. O.K., what questions did you ask?

A. I asked him for his Mexican passport.

Q. You asked him for his Mexican passport?

A. Yes.

Q. Did he produce a Mexican passport?

24 A. He did not.

Q. Did he give any response?

A. Yes.

Q. What did he say?

A. He said it was in Mexico.

Q. And what did you do then?

A. I asked him why it was in Mexico.

Q. And what did he say?

A. He replied that he'd sent it there because he was afraid of losing it.

Q. What did you do then?

A. I asked him for his social security card.

Q. What did he do in response?

A. He produced it.

Mr. MACKENZIE. This is the social security card.

Mr. CLEARY. At this time I would like this marked as Defendant's Exhibit 2, for identification.

(Said document was marked Defendant's Exhibit 2, for identification.)

By Mr. CLEARY:

25 Q. At this time, sir, I am showing you a document marked Defendant's Exhibit 2, for identification.

Do you recognize it?

A. Yes, sir, I do.

Q. Is that the card that the defendant showed you?

A. Yes, it is.

Q. Did you say anything at this time in response to receiving that card?

A. Not that I recall.

Q. Did the defendant say anything after producing that card?

A. No, I don't recall anything.

Q. What did you do at that time then, sir?

A. I returned the documents to the defendant.

Q. You returned both Defendant's Exhibit 1 and Defendant's Exhibit 2 to the defendant, is that not correct?

A. No, pardon me, there is a correction. I did show the two documents to Investigator Burrow.

Q. What did he do with those documents?

A. He looked at them.

Q. Then what if anything did he do?

A. He gave them back to me.

26 Q. Then in turn you returned these to the defendant, is that not correct?

A. I did.

Q. What did you do then?

A. By this time Miguel Rico was ready to depart, so we left with Miguel Rico.

Q. Now, where did you take Miguel Rico?

A. I took him back out and put him in a vehicle.

Q. What type of vehicle did you have?

A. A two-door sedan.

Q. Did you have only one two-door sedan for eight agents?

A. No.

Q. How many vehicles did you have?

A. We had four.

Q. Was any other person present besides the agents you have heretofore enumerated?

A. No, there were not—just when do you mean, counselor?

Q. I mean at this time when you returned Miguel Rico to the vehicle, who was present at that time?

A. Investigator White.

27 Q. Was there anyone else present besides Investigator Burrow, White, yourself and Miguel Rico?

A. There was.

Q. Who were they?

A. I don't recall their names.

Q. Were they prisoners?

A. They were.

Q. Do you remember how many there were?

A. I do not.

Q. Did any conversation take place with respect to this defendant out there in that automobile or near that vehicle?

A. In respect to the defendant?

Q. Right.

A. Yes.

Q. What happened then?

A. In respect to what, counsel?

Q. Well, what did you do then after you were out there in the car and you had Miguel Rico in the vehicle? Did you drive off? What did you do?

A. No, I was the driver of the car that I was riding—in which I was riding. Another individual was approaching us at this time, coming up the sidewalk.

28 Q. Do you know who this individual was?

The COURT. Can you hear him?

Mr. MACKENZIE. No, your Honor.

Would you speak up, Mr. Jacobs, please.

The COURT. Please.

By The WITNESS:

A. There was another individual approaching us on the sidewalk.

By Mr. GLEARY:

Q. Do you know his name?

A. I recall his last name.

Q. Ortiz Rodriguez, is that correct?

A. That's correct, counsel.

Q. What did you do, if anything, at that time?

A. I personally did nothing.

Q. Did you see any other immigration agent do anything with respect to Mr. Ortiz Rodriguez at that time?

A. I did.

Q. What agents did anything with respect to Mr. Ortiz Rodriguez, which ones?

A. Investigator White and Investigator Burrow.

Q. What did you see them do, if anything?

29 A. They talked to this other individual, talked to Mr. Ortiz.

Q. As a result of their conversation did they place Mr. Ortiz under arrest?

A. They placed him in the car in which I was riding.

Q. Presumably he was under restraint at that time, is that not correct?

A. He was.

Q. What happened then if anything?

A. Well, we warned him of his rights.

Mr. CLEARY. At this time, your Honor, I made a mistake on my part. I hope you will forgive me. I won't say I'm the most experienced, but at this time I would like to exclude any other agents who may be testifying in this matter at this time.

The COURT. Motion granted.

Very well, proceed.

By Mr. CLEARY:

Q. What happened then?

A. We questioned him.

Q. As a result of your questioning—was this in the vehicle that you questioned him?

30 A. It was.

Q. Did you question him about the type of alien registration card he might have had in his possession?

A. He had already produced this.

Mr. CLEARY. Could you mark this Defendant's Exhibit 3? (Said document was marked Defendant's Exhibit 3, for identification.)

The COURT. Whose registration card is this?

Mr. CLEARY. Well, another defendant in another matter who was arrested at the same time.

By Mr. CLEARY:

Q. At this time I show you a document marked Defendant's Exhibit 3, for identification.

Do you recognize that document, sir?

A. Yes.

Q. Was that the document produced by Mr. Ortiz Rodriguez?

A. It was.

31 Q. Did you have a chance to examine that document at that time, sir?

A. I examined it somewhat.

Q. Was there any discussion about the authenticity of that document?

A. Yes.

Q. Was it as a result of the discussion concerning the authenticity of that document that Mr. Rodriguez was placed under arrest?

A. You mean, counselor, after he was placed in the car?

Q. Well, do you know why he was placed in the car, sir?

A. Mr. Burrow and Mr. White had already made this determination.

Q. They had already looked at this card?

A. They had.

Q. Did any conversation take place within the car within your hearing, within your knowledge, as to the authenticity of this card?

A. Yes.

Q. And did that conversation result in the fact that statements to the effect—and I don't want the words—that this card was not an accurate card?

32 A. That is right.

Q. Was there any discussion at that time—at that time when you were discussing the card, concerning the defendant?

A. There was none.

Q. There was none.

O.K., what happened then after you had placed Mr. Ortiz under arrest?

A. Well, as I have already said, he was warned of his rights and he readily admitted his alienage and the fact that he was in the United States illegally.

Q. But you did return, or some immigration agents did return to the apartment where the defendant was staying, is that not correct?

A. Yes.

Q. Do you know who those agents are?

The Court. Just a moment now, do you have an objection?

Mr. MACKENZIE. Your Honor, the questions are extremely leading at this point. Could he be a little bit more specific in the questioning of this witness?

The COURT. Yes, please try and do so.

33 Mr. CLEARY. Your Honor, I am trying to cut down the time——

The COURT. Yes, but in that we are not going to do away with the rules of the court either.

Mr. CLEARY. Yes, sir.

The COURT. The rules of procedure I should say, not rules of the court.

By Mr. CLEARY:

Q. To your knowledge did any of the agents return to the apartment where the defendant was staying?

A. Yes.

Q. Do you know who those agents were?

A. Yes.

Q. Would you tell the Court their names?

A. They were Investigator Burrow and Investigator White.

Q. These were the same two agents who made this street arrest of Mr. Ortiz, is that correct?

A. That is correct.

Q. Did you accompany them back to the apartment at that time?

A. No, I did not.

34 Q. When was the next time you saw these two agents?

A. When they returned with Mr. Ortiz and the defendant.

Q. At any time did you or any other agent in your group, to your knowledge, have a search warrant to enter the apartment of this defendant?

A. No, sir, we had none.

Mr. CLEARY. Thank you. I have no further questions of this witness, your Honor.

The COURT. Anything, Mr. District Attorney?

Mr. MACKENZIE. Yes, your Honor.

#### CROSS EXAMINATION

By Mr. MACKENZIE:

Q. Mr. Jacobs, you testified on direct that on the morning of November 19 you were present with a number of other agents



of the Immigration Service at the Roulon Corporation, is that correct?

A. That is correct, sir.

Q. I believe you also testified that a number of arrests were made at that corporation on that morning?

A. That is correct, sir.

35 Q. And that among the individuals arrested one Miguel Rico was taken into custody?

A. That is correct.

Q. Mr. Jacobs, when a defendant is taken into custody by immigration officers, is there a routine that the agents go through with the defendant prior to taking him downtown, to wherever he is going to be placed, whatever institution he may be taken to for detention?

A. Yes, sir, there is.

Q. Would you describe that routine, please?

A. Usually aliens that have been taken into custody request—they make the request that they be permitted to obtain their possessions—

Mr. CLEARY. Excuse me, your Honor, I have to object as to relevancy—

The COURT. Yes, that is sustained.

Mr. CLEARY. Unless it is the routine of this defendant.

The COURT. That is correct. Sustained.

By Mr. MACKENZIE:

Q. Did Miguel Rico make a request of immigration officials that he be allowed to return to his residence to collect his belongings?

36 Mr. CLEARY. I object to that as latent hearsay.

The COURT. It certainly is. Sustained.

Mr. MACKENZIE. Well, your Honor, the defendant's counsel requested permission to pursue a line of inquiry into the arrest of Miguel Rice as a grounds for his continued argument as to the presence of the agents at the residence.

The COURT. Let me have the question again, please.

Mr. MACKENZIE. Pardon?

The COURT. I am going to ask the reporter to read the question to me again.

(The pending question was read by the reporter.)

The COURT. I don't see the materiality of it.

Mr. MACKENZIE. Pardon me?



The COURT. You did pursue that line of questioning, he made a request—now, I know, don't put the finger up here.

Mr. CLEARY. No, sir, I'm sorry.

The COURT. All right. Go ahead.

37 Mr. CLEARY. The point I am getting at, and I don't believe in going around corners, but I would like to meet the issue head-on, and that is the question of consent of entering the apartment. It is my contention that the only way the Government can establish the consent is if they produce Miguel Rico, who is the one who gave orally the consent, unless he gave it in writing, and my point is that this is why the Government is leading this line of questioning, and my feeling is that they have an opportunity to present the man.

The COURT. I don't think you are right. If this man knows he can so state whether or not consent was given. If he doesn't know he can't so state, but he is an agent of the United States Government, and if such consent was given I think he can testify to it. You went into the arrest.

Mr. CLEARY. Well, your Honor—

The COURT. No, that's enough. Your objection is overruled.

By Mr. MACKENZIE:

Q. Mr. Jacobs, was such a request made by Miguel  
38 Rico?

A. Yes, sir, it was.

Q. Mr. Jacobs, upon arriving at the address Miguel Rico gave you as being his residence, did you accompany Mr. Rico to his apartment?

A. Yes, sir, I did.

Q. Was there anyone else present with you at this time?

A. Yes, sir.

Q. Who was that?

A. Investigator Burrow.

Q. When you arrived at the apartment door of Miguel Rico, do you recall whether or not Mr. Rico had a key and unlocked the door himself?

A. I don't recall, but I believe that he knocked and the door was opened.

Q. I see. Was there any conversation at this time between Miguel Rico and yourself, or with Agent Burrow, that you overheard?

A. You mean between Miguel Rico and Agent Burrow?

Q. Yes.

A. At this time I don't recall.

Q. Who entered the apartment first?

39 A. Miguel Rico.

Q. Did he in any manner indicate to you or to Agent Burrow—and I refer to either by motion or by spoken word—his consent for you to follow him into the apartment?

A. Yes, sir, he did, by both.

Q. Would you state that?

A. He motioned for us to enter, and he also bid us enter. The COURT. Yes, counselor?

Mr. CLEARY. At this time, your Honor, I would like to object to the statements because if it is either by oral word, it's hearsay, or by conduct, it's hearsay, as to the actions of Miguel Rico, and I want to move that this testimony be struck, or in the alternative, the defendant be given an opportunity, and with Government funds since he is indigent, to try and locate this particular witness so that he can bring him into court contrary—to present testimony contrary possibly to this agent. Otherwise, the defendant's constitutional rights under the Sixth Amendment, a confrontation of witnesses, means almost an absolute nullity.

40 The COURT. The objection is overruled and the motion is denied.

By Mr. MACKENZIE:

Q. Once you had entered the apartment, Mr. Jacobs, you stated on direct that you identified yourself to the defendant?

A. Yes, sir.

Q. Do you see Dimas Campos-Serrano in the courtroom?

A. Yes, sir, I do.

Q. Would you point him out?

A. He is sitting at the end of the table, with the blue jacket.

Mr. MACKENZIE. Let the record show that the witness has identified the defendant Dimas Campos-Serrano.

The COURT. The record may so reflect.

By Mr. MACKENZIE:

Q. At this time did you advise the defendant Dimas Campos-Serrano of your purpose for being in the apartment?

A. Yes, sir, we did.

Q. And what did you say?

41 A. At the time of entry we first asked the defendant if Miguel Rico lived there, and he replied

that he did. This is as I recall it, and so he—and we told him then who we were and why we were there, that Miguel Rico was under arrest and we had come to let him get his belongings.

Q. I see, thank you.

Did you accompany Miguel Rico while he collected his belongings?

A. No, sir, I did not.

Q. What if anything did you do?

A. I talked to the defendant.

Q. You say you had a conversation with the defendant?

A. Yes, sir, I did.

Q. Where did this conversation take place?

A. It was in the—what would have been the living room, in approximately the area that led into the kitchen.

Q. Was there anyone else present that could have overheard this conversation?

A. Yes, sir.

Q. Who was that?

A. Investigator Burrow.

Q. Would you tell the Court, please, what you said  
42 to the defendant at this time?

A. I asked him where he was from, and he told me from Mexico, and then I asked him under what circumstances he was in the United States, under what status under the immigration laws, and he replied as a resident, and then I asked him for proof, and he produced this document that I previously identified.

Q. Mr. Jacobs—

The COURT. Is it necessary, counselor, to go over this again?

Mr. MACKENZIE. This one point is, your Honor, because I think it does have a material bearing.

The COURT. Very well, proceed.

By Mr. MACKENZIE:

Q. I show you what has been marked Defendant's Exhibit 1 and ask you if that was the document that was presented to you by the defendant.

A. Yes, sir, it is.

Q. You stated that you examined it at this time, is that correct?

A. I did.

Q. And did you detect at this time any defects in that  
43 document?

A. No, sir, I did not.

Q. Will you tell the Court if under—or would you tell the Court under what circumstances you examined this document?

A. I examined the document to see if it had been altered.

Q. And could you determine in the apartment at that time whether or not it was altered?

A. No, sir, I could not.

Q. Was there a reason for your inability to make such an examination at this time?

A. There was insufficient light.

Q. You say there was insufficient light. Were the lights on in the apartment?

A. No, sir, they were not.

Q. Did you notice whether or not there were any electric lights in the apartment?

A. I do not believe there were any in the living room. In fact, I'm rather certain there were not.

Q. What light was available to you for examination of this?

A. Light coming through the drawn shades.

44 Q. I believe you stated on direct that after looking at this document you asked the defendant for his passport?

A. Yes, sir, I did.

Q. And that the defendant stated that he did not have his passport?

A. That is correct.

Q. Based on your experience as an officer in the Immigration Service, is it common for individuals entering a foreign country to fail to have in their possession documents which would necessarily indicate their legal status in the United States?

A. No, sir.

Mr. CLEARY. I want to object to that, your Honor.

The COURT. Just a moment. State your objection, Mr. Cleary.

Mr. CLEARY. I would object to the question on the grounds that it calls for a conclusion.

The COURT. It does. Sustained.

By Mr. MACKENZIE:

45 Did the defendant Dimas Campos-Serrano state why he did not have his immigration document, his passport, with him at the time?

A. Yes, he did.

Q. And what was the reason that he told you?

A. He told me that he had mailed it back to Mexico.

Q. Did you ask him why he had mailed it back to Mexico?

A: Yes, sir, I did.

Q. And what was his reason?

A. He said that he feared losing it here in Chicago.

The COURT. Now, let's get along here.

Mr. MACKENZIE. Yes, sir.

By Mr. MACKENZIE:

Q. When was your next conversation with the defendant Dimas Campos-Serrano?

A. You mean, counselor, following the departure from the apartment?

Q. Yes.

A. It was en route to the office when Investigator Burrow had to stop for gas.

Q. Who was present at the time this conversation took place?

A. Investigator White.

46 Q. Who else?

A. Several aliens.

Q. Where did this conversation take place?

A. The defendant was sitting in Mr. Burrow's car, his vehicle, and I was standing outside the car talking to him.

Q. O.K., and would you tell the Court, please, what you said to the defendant and in turn what the defendant's response was to you?

A. I asked him his true name and other identifying data, and he gave me the name that is on this document. I then produced the document and I showed him where it could be readily seen it had been changed and asked him again his true name, and he gave it to me.

Q. Prior to asking the defendant these questions, were you informed as to whether or not the defendant had been advised of his rights?

A. Yes, sir, I had been.

Q. And who informed you of that?

A. Mr. White.

Mr. MACKENZIE. I have no further questions of this witness.

The COURT. Very well, anything further?

47 Mr. CLEARY. Just a few, your Honor.

The COURT. All right, Mr. Cleary.

## REDIRECT EXAMINATION

By Mr. CLEARY:

Q. At the time the defendant was seen in Investigator Burrow's car he was under arrest, is that not correct?

A. Yes, sir, he was.

Q. And you gave him no warning whatsoever, is that correct?

A. I personally did not.

Q. Where did you take the defendant or where did you see the defendant taken?

A. He was taken——

Q. After he was arrested.

A. He was taken to this office building.

Q. This office building?

A. Yes, he was.

Q. On what floor was he taken, sir?

A. He was taken to the third floor.

Q. To the third floor, and again, of your own knowledge do you know what was done with him at that time?

A. After he was brought to the office I had no  
48 further contact with him.

Q. Do you know if this was a weekday, and what weekday it was, November 19?

A. It was a weekday—I don't remember which one.

Q. Are you familiar with the office of the United States Commissioner in this building?

A. I have never been there.

Q. The defendant was not taken to that office, to your knowledge?

A. Not to my knowledge.

Mr. CLEARY. No further questions, your Honor.

The COURT. Very well, you may step down, Mr. Jacobs.

(Witness excused.)

49 Mr. CLEARY. At this time I would like to call Immigration Agent Burrow.

Clark Burrow, called as an adverse witness herein by the defendant, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

By Mr. CLEARY:

Q. Would you state your name for the record, sir?

A. Clark Burrow.

Q. How do you spell your last name, sir?

A. B-u-r-r-o-w.

Q. Would you state your position or occupation?

A. I am an investigator for the U.S. Immigration Service.

Q. How long have you been engaged in that profession, sir?

A. Since April of '65.

Q. Have you been continuously employed in that particular vocation?

A. I have.

Q. On 19 November 1968 were you engaged as an immigration investigator?

A. I was.

Q. Were you on that day a part of a task force arrest group?

A. I was.

Q. Do you remember when the arrests of 19 November 1968 were first discussed by members of the immigration office?

A. At first no—I know they were discussed prior to the—

Q. Were you a part of those discussions, sir?

A. Yes.

Q. How many immigration officials were present at that discussion?

A. Approximately eight, to the best of my knowledge.

Q. Do you know their names, sir?

A. Yes.

Q. Could you state them for the record, sir?

A. Mr. Bruce Ferguson, Mr. Bruce Peterson, Mr. Lewis, Mr. McLennon, Mr. White, Mr. Jacobs.

Q. Do you remember how many persons were listed to be arrested on the following day?

A. I do not, sir.

51 Mr. MACKENZIE. Your Honor, I don't believe counsel has established the fact that there was such a list in existence, or whether there was—

The COURT. Well, he has already answered.

He said he doesn't.

By Mr. CLEARY:

Q. On the morning of the 19th what was your first action toward the arrests of that day?

A. Well, we—all the officers met at the—at the location, at the company at which suspects—not suspects, the persons were to be questioned and status determined—immigration status to be determined.



Q. Was that the Roulon Company, to your knowledge?

A. Yes, it was.

Q. And where at the Roulon Company did you agents meet?

A. In the vicinity.

Q. Do you know, roughly?

A. No particular location, no, sir.

52 Q. Do you remember what agents were present at that time—well, first of all, do you know, what time did you meet?

A. I do not recall. It was approximately 6:00 o'clock.

Q. In the morning?

A. In the morning, in the a.m.

Q. Do you remember who was there with you at the meeting?

A. All the above—all of the officers that I've mentioned.

Q. Do you remember how many persons were to be interviewed?

A. I do not, sir.

Q. Do you have any estimate as to the number?

A. I do not, sir.

Q. Was it more than ten or less than ten?

A. I do not know.

Q. Were you present when Miguel Rico was interviewed?

A. I was not, sir. To the best of my recollection I was not.

Q. Do you remember how many persons were taken into custody at the Roulon Manufacturing Company on that morning?

A. No, sir, I do not. I do not know.

53 Q. Did you leave the Roulon Manufacturing Company that morning?

A. Pardon?

Q. Did you leave the Roulon Manufacturing Company, the area of the Roulon Manufacturing Company that morning?

A. After our business had terminated—we had terminated our business there.

Q. What business did you terminate?

A. Well, after we questioned suspects in the area or vicinity of the—

Q. What suspects did you question?

A. Aliens or persons suspected of being aliens.

Q. How many?

A. I do not know, sir. Several.

Q. And when did you finish your interview?

A. Approximately 8:00 o'clock in the a.m.



Q. What did you do at that time, if anything?

A. I proceeded with Mr. Jacobs and Mr. White. I followed them in a car.

Q. Did Mr. Jacobs and Mr. White have anyone in their custody at that time?

A. They did.

54 Q. Do you know who that person was?

A. No. No, sir, I do not.

Q. Was there any other person besides Agent Jacobs or Agent White and this other person?

A. I know there were other persons in the car. I do not know the number.

Q. Were they suspects?

A. Yes.

Q. Would you estimate the number—more than five or less than five?

A. Oh, less than five.

Q. Less than five.

Where did you go, sir?

A. We followed them to their—accompanied the aliens to their—to their residences.

Q. Which was the first residence you went to, sir?

A. I do not recall, sir.

Q. Do you know what section of the city it was in?

A. In the southwest, the vicinity of California and Cermak.

55 Q. Did you make, that morning, stops at several of the residences of the suspects that you had in the car?

A. Yes, we did.

Q. Do you remember—you don't recall Miguel Rico, do you?

A. Yes, I recall him.

Q. O.K., do you remember stopping at his residence that morning?

A. Yes, I do.

Q. Do you remember what happened that time, if anything?

A. Well, Investigator Jacobs and I accompanied Miguel Rico to his apartment to obtain his personal property.

Q. Did you have a search warrant at that time, sir?

A. We did not.

Q. Did you have an arrest warrant for either Miguel Rico or the defendant Dimas Compos-Serrano?

A. No, sir.

Q. After Agent Jacobs and you entered the apartment what did you do?

A. I accompanied Miguel Rico to his room or the vicinity of his room, to observe his—his packing, packing of his personal property.

56 Q. How many rooms in the apartment?

A. To my knowledge four, as I recall.

Q. Did you look in any of the closets of the apartment?

A. On one occasion when—when Miguel Rico—as I recall, I accompanied Miguel Rico to his closet. He was to obtain some clothing from his closet. I first looked in the closet to see what property he wished to obtain there.

Q. Did you look at any of the—well, first of all, were the other rooms opened or closed?

A. To my knowledge they were all open. As I recall they were all open.

Q. Did you look in any of the other rooms, physically enter the other rooms?

A. I did not, sir.

Q. Did you look in any of Miguel Rico's drawers?

A. To my knowledge, no, sir.

Q. And you stood next to Miguel Rico as he packed some type of belongings?

A. I stood in the doorway to observe—partially observe Mr. Jacobs and then to observe Mr. Rico also.

57 Q. How far were you from Miguel Rico?

A. A matter of four yards, five yards, something like that.

Q. About 15 feet?

A. Something like that.

Q. How far were you from Agent Jacobs?

A. Approximately the same, maybe less.

Q. Did you overhear the conversation that took place between—oh, excuse me.

Do you know whether a conversation took place between Agent Jacobs and Mr. Campos?

A. I do.

Q. Did you overhear that conversation yourself?

A. Not all of it, no, sir.

Q. Did you examine any of the documents tendered by Mr. Campos to Agent Jacobs?

A. Yes, I did.

Q. At this time, sir, I am showing you two documents, one marked Defendant's Exhibit 1, for identification, and another marked Defendant's Exhibit 2, for identification.

Were these the documents tendered to you by Agent Jacobs?

58 A. They are.

Q. When you looked at these documents, sir, what did you specifically look at on the documents themselves, if anything?

A. First of all, I paid particular attention to the alien registration card, the Form I-151, to ascertain that the picture was the same as the subject presenting the document.

Q. Did you have an opportunity to look at the picture on the card and compare it with Mr. Campos?

A. Yes.

Q. Did you look at anything else on the card?

A. And, of course, the name.

Q. Where is that located on the card, sir?

A. On the reverse side—or on the side other than the picture.

Q. Did you look at the name?

A. I did.

Q. Did you look at the social security card?

A. I did.

Q. And by any reason did you compare the name on the social security card with the name on the alien registration card?

A. I did.

59 Q. Did you ask any questions of Mr. Campos?

A. To my knowledge, no, sir.

Q. And what did you and Agent Jacobs do after the conversation with Mr. Campos?

A. By this time Mr. Rico had obtained all of his personal effects, all of the personal property that he wished, and we left the apartment.

Q. Now, to your knowledge what personal property did Mr. Rico have with him?

A. Clothing.

Q. What type of clothing, sir, if you know?

A. Rough clothing, work clothing. As far as items, I could not mention.

Q. Do you have any idea how big his bundle was?

A. I don't—I do not recall.

Q. Do you know whether he had shoes with him or not?

A. This I do not recall.

Q. Do you know whether he had a pair of trousers with him?

A. Yes, he had several things with him, but the size or the amount, this I do not know.

Q. And then you, and Agent Jacobs left the  
60 apartment?

A. That's right, sir.

Q. Thereafter you and Agent—well, did you have an opportunity on that day to meet Mr. Ortiz Rodriguez?

A. Yes, sir—Mr. Ortiz.

Q. Mr. Ortiz?

A. Right.

Q. Would you relate the circumstances surrounding your meeting with this individual on that day?

A. After Investigator Jacobs and Miguel Rico and myself arrived back at the car, Mr. White, Investigator White had observed this subject approaching him on the sidewalk. He noticed that this—what appeared to him, as he related to me, that the subject kind of—sort of hesitated when he saw us arriving, approaching the cars, and thought it might be worthwhile to question the subject.

Q. Did you question the subject?

A. I did.

Q. Was anyone else present besides Mr. Ortiz and yourself?

61 A. Mr. Jacobs arrived—Mr. White arrived there shortly thereafter, after I had approached the subject.

Q. You initiated the interview with Mr. Ortiz?

A. Right.

Q. Did you identify yourself, sir?

A. I did.

Q. What did you say if anything to ~~Mr.~~ Ortiz?

A. I asked him his citizenship—of what country he was a citizen.

Q. And did you say anything else to him?

A. He—he answered me.

Q. Well, I am not concerned with what he said, I am concerned with what you said to him.

The COURT. Well, I might be, though.

Mr. CLEARY. Well, yes, sir. I mean—

The COURT. He is not going to recite only one part of the conversation.

By Mr. CLEARY:

Q. All right, what did Mr. Ortiz say to you?

A. He answered me with Mexico, that he was a citizen of Mexico.

Q. And what did you say to him, if anything?

A. And he produced—at that moment produced an  
62 alien registration card.

Q. Did you examine that alien registration card?

A. I did, sir.

Q. As a result of your examination of that card, what did you do, if anything?

A. After examining it I handed it to Investigator White, who also examined the card.

Q. Why did you hand the card to Investigator White?

A. Because it appeared altered.

Q. In what respect was it altered, sir?

A. The lamination appeared to be different from that normally on—on alien registration cards.

Q. What did Agent White do, if anything, with the card?

A. He too examined it and inquired of me that the card did appear altered, and we—the subject was taken into custody.

Q. Did you give him any particular warning at that time?

A. The subject was placed in the car—

The COURT. Rather than use “the subject,” are you  
63 talking about the defendant?

Mr. CLEARY. No, sir, Mr. Ortiz.

The COURT: All right, let's get the names in here for the purpose of the record, because to use “the subject” is confusing.

Mr. CLEARY: Yes, sir.

By Mr. CLEARY:

Q. Did you give any warnings to Mr. Ortiz at that time?

A. I did not.

Q. When you took Mr. Ortiz into custody did you put any handcuffs or any other type of restraints on him?

A. No, sir.

Q. You placed him in the car, is that not correct?

A. Yes, sir.

Q. Within your knowledge and what you observed, did you see any other immigration agent give him a warning?

A. I know the—well, I was told that the subject was—  
Ortiz was—

Q. I am not concerned with that. You didn't see anybody give him a warning?

64 A. No.

Q. Do you speak Spanish, sir?

A. I do.

Q. During your conversation with Mr. Ortiz was the name of Mr. Campos brought up?

A. It was not.

Q. After your conversation with Mr. Ortiz what did you do, if anything, then?

A. Well, we proceeded to leave the location.

Q. You proceeded to leave the location?

A. Right.

Q. Did you get into your vehicle?

A. Right.

Q. Did you drive off?

A. No.

Q. What did you do then before you drove off?

A. The subject was—

Q. Who is "the subject" now?

A. Mr. Ortiz was questioned concerning his—or he was asked if he had clothing, personal property, at home, that he would like to obtain prior to going to the office.

Q. Do you know who asked him this question?

65 A. No, sir, I do not.

Q. As a result of that questioning what was said or done?

A. He advised that he—Mr. Ortiz advised that he did have personal property that he wished to obtain and advised us of his address.

The COURT. Why don't we pause there for a moment, Mr. Cleary?

Recess this court for a few moments.

Do not discuss your testimony with anyone while you are off the stand.

Mr. CLEARY. Your Honor, could I ask that the witness be instructed not to talk to anyone?

The COURT. I have just done so.

Mr. CLEARY. Thank you, your Honor.

(A short recess was taken.)

The COURT. All right, Mr. Cleary, you may proceed.

Mr. CLEARY. Thank you, your Honor.

By Mr. CLEARY:

Q. After your conversation with Mr. Ortiz about his clothing where did you go, if any place?

A. We followed him to — Mr. White and I  
66 followed Mr. Ortiz to his apartment.

Q. Where was this apartment?

A. It was the same as that of Miguel Rico.

Q. How did you gain entry into that apartment, if you entered?

A. Mr. Ortiz proceeded as to the door and gained entry. I do not recall whether or not he had a key or he knocked on the door to gain entry.

Q. What did you do at that time after you entered?

A. We—I again told—or I told Mr. Campos our reason for being there.

Q. What did you tell him?

A. That we were there to—to obtain the clothing of Mr. Ortiz.

Q. O.K., did you say anything further to Mr. Campos?

A. Yes.

Q. What did you say?

A. I asked him for his—I asked for his alien registration card.

Q. Had you not previously examined that card?

A. I did.

Q. Why did you ask him for this card?

67 A. Because Mr. Ortiz presented an altered—what appeared to be an altered alien registration card—and I thought since there was one in the apartment there was a possibility that Mr. Campos' card too was altered.

Q. Did you examine this card?

A. I did.

Q. Was Mr. White—excuse me—yes, Agent White, present?

A. He was in the vicinity.

Q. What do you mean by in the vicinity?

A. He was not present at the time when Mr. Campos handed me the card, but he was in the adjoining room.

Q. Prior to asking for the card from Mr. Campos, did you advise him of any rights?

A. No, I did not.

Q. After securing the card from him did you advise him of anything whatsoever?

A. Yes, sir, later.



Q. I mean at the time after—after you secured the card?

A. At the time he presented the card to me, no, sir.

68 Q. After you got the card from him, immediately thereafter, did you give him any warning?

A. In what length of time?

Q. Immediately, right then.

A. No, sir.

Q. Did you say to him anything about possible alteration of the card?

A. As I recall I told him that the card appeared altered, and I asked him if he was sure that this was the card, his card.

Q. What did you do then, if anything?

A. The subject was—Mr. Campos was taken into custody and told to obtain his clothing, personal property that he wished, the property that he had wished to carry with him.

Q. Did you tell him to obtain his property or did you say he might obtain his property?

A. He might obtain his property.

Q. You placed him in the vehicle outside, is that correct?

A. Yes, he was taken to the vehicle.

Q. And from there transported to the Federal Building here?

A. Yes.

69 Q. At any time did you—or do you have knowledge of any agents taking him to the U.S. Commissioner's office on the 24th floor?

A. No, sir.

Mr. CLEARY. I have no further questions of this witness.

The COURT. Very well, Mr. Cleary.

Mr. District Attorney.

#### CROSS EXAMINATION

By Mr. MACKENZIE:

Q. Mr. Burrow, you stated that you accompanied Mr. Rico while he secured his personal property, is that correct?

A. Yes, sir.

Q. And I believe you stated that you did examine the closet when he approached this closet to secure some of his property?

A. Yes, sir, that is correct.

Q. What was the purpose in doing that?

A. To make sure that there were no weapons present and that it was not an exit from the room.

Q. Jumping ahead a little bit in time, after you had encountered Mr. Rodriguez Ortiz and determined that his—the document he presented in support of his status in the United States was altered, and that he requested permission to return to his apartment to get his property—  
 70 at this time did you have any reason to suspect that the apartment that Mr. Ortiz would be returning to was the same apartment in fact that was occupied by Mr. Campos-Serrano, the defendant in this case?

A. No, sir, I did not.

Q. Did Rodriguez Ortiz tell you he was returning to the apartment of Mr. Serrano?

A. No, sir, he did not.

Q. Did he give you an apartment number that he was returning to?

A. No, sir.

Q. Did he lead you to his apartment?

A. He did, sir.

Q. And was the first time you realized that it was the same apartment that you had previously been in—was the first time you realized it when you actually were at the door?

A. Right, sir. Yes, sir.

Q. You stated that upon entry into the apartment Mr. White accompanied Rodriguez Ortiz while he gathered his belongings and that you again questioned the defendant Dimas  
 71 Campos-Serrano.

What prompted you to initiate for a second time the questioning of the defendant?

A. The fact that Mr. Ortiz had what appeared to be an altered alien registration card, and the fact that the lighting was dim in the room on the first—first visit to the apartment.

Q. Mr. Burrow, I show you now what has previously been marked Defendant's Exhibit 1 and Defendant's Exhibit 2, but which I have marked Government's Exhibit 1, for identification, and Government's Exhibit 2, for identification, and showing you Government's Exhibit 1, first, can you identify that document?

A. I can, sir.

Q. Was this the document that the defendant presented to you in his apartment on the morning of November 19 in support of his status of being lawfully in the United States?

A. It is, sir.

Mr. MACKENZIE. Your Honor, at this time I offer what has been marked Government's Exhibit 1, for identification, being the immigration document I-151, with the name appearing thereon, Dimas Vargas Garcia. Both sides are

72 being offered into evidence as Government's Exhibit 1.

Mr. CLEARY. Subject to my standing motion to suppress—

The COURT. Overruled.

Government's Exhibit 1 may be admitted into evidence.

Mr. MACKENZIE. Would you strike the identification mark?

The COURT. The identification mark may be stricken.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 1.)

By Mr. MACKENZIE:

Q. I show you what has previously been marked Defendant's Exhibit 2, which is now marked Government's Exhibit 2, for identification, and ask you if you have ever seen that document before.

A. I have, sir.

Q. Was this the document that was presented by the defendant Dimas Campos-Serrano on the morning of November 19 in his apartment?

73 A. It is, sir.

Mr. MACKENZIE. I now offer Government's Exhibit 2, for identification, into evidence, being the social security card of the defendant Dimas Campos-Serrano, the name appearing on said card being Dimas Garcia Vargas.

The COURT. Subject to your same objection?

Mr. CLEARY. My same objection as to the motion to suppress, your Honor.

The COURT. Yes. It will be overruled and it will be admitted.

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 2.)

By Mr. MACKENZIE:

Q. You stated that the card was examined by you.

Did your examination at this time take on any characteristic that was different from your prior examination of the card?

Mr. CLEARY. I object to the form of the question.

The COURT. It is objectionable, counselor.

74 Mr. MACKENZIE. Yes, sir, I will rephrase it, your Honor.

The COURT. All right.

By Mr. MACKENZIE:

Q. Would you tell the Court the manner in which you analyzed the immigration document that was presented to you by the defendant the second time you were in the apartment?

A. I took the card to a location where there was more light.

Q. Where was this?

A. As I recall, in the kitchen of the apartment.

Q. Did you have any aid available to you in this examination that you did not have previously?

A. Yes. As I recall, a flashlight. We had a flashlight in the kitchen area, which was also lighter itself than the previous room in which the document was examined.

Q. I see.

A. Also, Mr. White—Investigator White was present at the examination of the document, at the time it was examined.

Q. I see. After you had examined the card and believed or determined it was altered, to your satisfaction, you 75-76 stated that you then took the defendant into custody, is that correct?

A. Yes.

Q. And the defendant was permitted to recover his belongings from the apartment?

A. Yes.

Q. Did you then leave the apartment with the defendant and with Ortiz?

A. Yes, after his clothing was obtained.

Q. After his clothing was obtained?

A. Yes.

Q. Did you at any time after leaving the apartment or in the process of leaving the apartment, advise the defendant Dimas Campos-Serrano of his rights?

A. I did.

Q. And would you describe that, please?

A. After we left the apartment, in walking to the car I advised the subject of his rights.

Mr. MACKENZIE. I have no further questions, your Honor.

The COURT. All right.

## REDIRECT EXAMINATION

By Mr. CLEARY:

Q. Did Mr. Ortiz ever expressly consent to your entry or the entry of Agent Burrow into his apartment?

A. You are referring to Agent White, sir?

Q. Agent White.

A. No, sir, he did not.

Q. And could you—

Mr. CLEARY. For the sake of ease I am trying to expedite this, your Honor.

The COURT. Very well, go ahead.

By Mr. CLEARY:

Q. I would like you to write out in Spanish the warning you gave to the defendant.

Mr. MACKENZIE. I object to that.

The COURT. Just a moment now. Did he give the warning to him orally?

Mr. CLEARY. I believe so.

Is that correct?

The COURT. You did?

The WITNESS. Yes, sir.

The COURT. Did you give it to him orally?

The WITNESS. Yes, sir, orally.

78 Mr. CLEARY. It will have to be in Spanish then, your Honor.

The COURT. Well, she understands Spanish.

Mr. CLEARY. Right. If I could have him write it down, because this is a critical thing—

The COURT. Well, all right, you give it to him orally, and you may write it out in Spanish. I know Mr. Kusbab will have trouble writing it in Spanish.

By Mr. CLEARY:

Q. O.K., could you very slowly, please, repeat the exact words, to the best of your knowledge, the words you used in advising Mr. Campos on the way to the car of his rights.

A. (The answer was in Spanish.)

79 The COURT. Is that it?

The WITNESS. Yes, sir.

The COURT. Now, you have him give it to us in English.

By Mr. CLEARY:

Q. I was just going to ask, would you repeat it for us in English, please?

A. Before we ask you any questions—

The COURT. This is what you said to the defendant?

The WITNESS. Excuse me, sir—

By Mr. CLEARY:

Q. This is in English what you said to the defendant?

A. Yes, the translation.

The COURT. All right.

By the WITNESS:

A. "Before we ask you any questions you must know your rights. You have the right to remain silent. Anything you say may be used against you in any court of law, administrative proceeding or immigration proceeding. Before we ask you any questions you have the right to consult a lawyer—an attorney."

80 The COURT. Is that it?

The WITNESS: Yes, sir.

By Mr. CLEARY:

Q. O.K. You advised him of this as you were walking from the apartment to the car, is that correct?

A. Yes, sir.

Q. He was walking and you were walking as this statement was given?

A. Yes.

Q. Was Agent White present?

A. He was.

Q. As you were giving this warning?

A. He was—we were all proceeding to the car.

Q. Prior to leaving the apartment did the defendant ever make a statement to you indicating that he knew this was a false card?

A. No, sir.

Q. He made no incriminatory statement prior to that time?

A. That's right.

Mr. CLEARY. I have no further questions your Honor.

81 At this time I would like to call—I'm sorry.

Mr. MACKENZIE. I would like one question on recross.



## RECROSS EXAMINATION

By Mr. MACKENZIE:

Q. When was the first time the defendant, to the best of your knowledge, did admit to the fact that the document he had presented was false and altered, and volunteered his real name?

A. After we had boarded the car and were proceeding to the office I stopped for gas and Investigator White and Jacobs also—we were traveling together—they also stopped with me, and Mr. Campos advised us—gave us his true and correct name.

Q. At this time?

A. At this time, yes.

Q. And this was subsequent to the warning of his right to remain silent that was given to him as you proceeded out of his apartment?

A. Yes, sir.

Q. Prior to that time he maintained his innocence?

A. Yes, sir.

82 Q. And that the document was accurate, and that he was the man that it purported to be?

A. Yes, sir.

Mr. MACKENZIE. No further questions, your Honor.

The COURT. You may step down.

(Witness excused.)

Mr. CLEARY. At this time I would like to call Immigration Agent White.

Adolphus B. White, called as an adverse witness herein by the defendant, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

By Mr. CLEARY:

Q. Would you state your name for the record, sir?

A. Adolphus B. White, Jr.

Q. What is your business or occupation?

A. I am an investigator for the United States Immigration and Naturalization Service.

83 Q. What office do you work with or are you assigned to?

A. Our Chicago office.

Q. On 19 November 1968 were you so employed?

A. Yes.



Q. How long have you been employed as an Immigration and Naturalization Service investigator?

A. As an investigator, since June 1966.

Q. How long have you been with the INS?

A. Since August 1957.

Q. On the morning of 19 November 1968 did you have occasion to meet a Mr. Ortiz?

A. Yes.

Q. Where was that, sir?

A. That was on California—I don't recall the exact address.

Q. Was that somewhere in the City of Chicago?

A. Yes, on California.

Q. Would you know in what part of the city that would be?

A. That's on the South Side.

Q. What were the circumstances surrounding your initial contact with Mr. Ortiz?

In other words, where did you first see him?

84 A. I was sitting in the Government car with some aliens that we had in custody, and I observed Mr. Ortiz coming down the sidewalk towards us.

Q. What if anything did you observe him do?

A. Well, it appeared that when he saw the car setting there that he came to a stop and looked around nervously, then continued walking slowly down the sidewalk.

Q. Were you or any of your other agents in uniform at that time?

A. No, we were not.

Q. Was there any type of markings on the car to indicate it was a Government vehicle?

A. No.

Q. What did you do after he stopped?

A. I continued to wait in the car.

Q. How long did you continue waiting in the car?

A. Well, it was a short period of time. I wouldn't say exactly how long.

Q. More than ten minutes, less than ten minutes?

A. Oh, less, less.

Q. Then what did you do after waiting?

85 A. Well, when—as he approached nearer to the car I was intending to get out to speak to him myself, but at this time Investigators Burrow and Jacobs and an alien came out of the building and as the man approached then Mr. Burrow questioned Mr. Ortiz.

Q. Did you talk to Agent Burrow before Agent Burrow talked to Mr. Ortiz?

A. I believe I did. I think I rolled the window down and mentioned to him that that fellow looked suspicious.

Q. Suspicious. Were you then with Agent Burrow when Mr. Ortiz returned to his apartment?

A. Yes, I was.

Q. Do you know under what circumstances Mr. Ortiz was returning to his apartment?

A. He was returning at his request to get his clothing and personal possessions.

Q. And at any time did Mr. Ortiz consent to the entry of you or Agent Burrow into that apartment?

A. Well, he asked to go back, and when we got to the door, as I recall, he produced a key and opened the door, and we just all went in together.

Q. He never invited you in, is that correct,  
86 sir?

A. No, he never asked me to come in, no.

Q. What did you do once inside the room, sir?

A. I continued with Mr. Ortiz to the area that he indicated he had his clothing and personal possessions, and again, he gathered them together.

Q. What type of clothing did he gather together, sir?

A. I don't recall. He had shirts and trousers, that sort of thing. I couldn't say exactly.

Q. Do you know how much—was it a big bundle, a small bundle?

A. I don't recall.

Q. Did you observe Agent Burrow's actions?

A. Yes.

Q. What did you observe him do, if anything?

A. As we entered the apartment Mr. Campos came out of another room and Mr. Burrow proceeded to go over and speak with him.

Q. At any time—well, did you overhear the conversation between Agent Burrow and Mr. Campos?

A. No, I didn't pay any attention initially. I was following Mr. Ortiz to see what he was doing.

87 Q. At any time did you pay any attention to the conversation?

A. Well, Mr. — I don't recall any exact conversation at that time between them. I know that he was questioning the — Mr. Campos.

Q. Do you remember when Agent Burrow advised, if he did at all, Mr. Campos of his rights?

A. That was as we were leaving the apartment and on the way to the car.

Q. Did you overhear him advise—use the wording of the rights?

A. Yes.

Q. Could you repeat to this Court in English the words that he used in Spanish?

A. Well, not exactly.

Q. To the best of your recollection, sir.

A. He advised him that he had a right to remain silent and that anything he said could be used against him, and I'm sure he told him that he had the right to a lawyer and so forth. I don't recall the exact—his exact wording.

Q. Was he standing still at the time he addressed the defendant, or was he moving?

A. Well, they were moving from the front door out  
88 to the car.

Q. Did you observe any words of acknowledgment that he had heard that statement from the defendant?

A. As I recall, Mr. Burrow asked him if he understood, and he indicated yes, he did.

Q. At any time did you have a search warrant to enter the apartment of Mr. Ortiz?

A. No, sir.

Q. At any time did you have an arrest warrant for Mr. Ortiz?

A. No, sir.

Q. At any time did you have an arrest warrant for Mr. Campos?

A. No, sir.

Mr. CLEARY. No further questions.

Your witness, sir.

The COURT. Yes, Mr. District Attorney.

## CROSS EXAMINATION

By Mr. MACKENZIE:

Q. Mr. White, you testified that Agent Burrow encountered Ortiz on the street, questioned him, and that Ortiz was taken to the car.

89 Did you at that time advise Ortiz of his rights?

A. I believe Mr. Jacobs advised him after we were inside the car.

Q. Did you overhear him receive his rights?

A. Yes, sir.

Q. Advise him of his rights?

A. Yes, sir. He was in the car.

Q. And was the statement that was made to him similar to the one you have just testified to had been made to the defendant in this case?

A. Yes, I believe Mr. Jacobs—as I recall, he read it off a form that we have.

Q. I see.

Did Mr. Ortiz acknowledge at this time that it was a false document?

A. Yes, after a few questions he admitted his true identity.

Q. And you stated that he requested that he be allowed to return to his apartment to collect his belongings?

A. Yes, sir.

Q. Would there be any purpose in returning to the apartment at this time other than to allow Ortiz to collect his belongings?

90 A. No, sir.

Q. You had no reason at this time to believe that the apartment occupied by Ortiz was in fact the apartment also occupied by the defendant in this case?

A. No, sir, we didn't know that until we got to the door. He just said, "I live here," and he led us back to the door.

Q. Therefore, you were going back with Ortiz in order to permit him, at his request, to obtain his belongings prior to being taken to a place of detention?

A. Yes, sir.

Q. As you were observing Mr. Ortiz collect his belongings, did Agent Burrow come over to you with the I-151 form that he received from the defendant?

A. Yes, sir.

Q. I show you what has been marked Government's Exhibit 1 and ask you if you can identify that card.

A. Yes, sir, this is the alien registration card that Mr. Burrow showed me.

Q. Mr. White, did you have in your possession at that time a flashlight?

A. Yes, sir.

91 Q. And did you and Agent Burrow proceed to examine the card with the use of that flashlight?

A. Yes, sir.

Q. Was the flashlight necessary, in your opinion—

Mr. CLEARY: I would like to object to the question, calling for a conclusion.

The COURT: Yes, objection sustained.

By Mr. MACKENZIE:

Q. What circumstances in the apartment required you to use a flashlight?

A. The light was very dim in the apartment, as I recall.

Q. Did you examine the document?

A. Yes, sir.

Q. What was your conclusion as to the—

Mr. CLEARY. Again—

The COURT. Yes.

By M. MACKENZIE:

Q. Upon examination what if anything did you notice?

A. I noticed that the card appeared to have been altered, that the picture was probably—or appeared that it had been changed, and also some erasure on the reverse of the document.

92 Q. Mr. White, I show you Government's Exhibit—what is marked Government's Exhibit 3, for identification, purporting to be a warning form, and ask you whether or not you have seen that before.

A. Yes, sir, it bears my signature.

Q. It does bear your signature.

Was it signed by you on or about the date it bears?

A. Yes, sir, it is signed and dated, and the time is noted.

Q. Was this delivered to the defendant Dimas Campos-Serrano?

A. Yes, sir.

Q. Was it presented by you, personally?

A. Yes, sir.

Mr. MACKENZIE. Your Honor, at this time I offer Government's Exhibit 3—

Mr. CLEARY. I haven't seen it yet.

Mr. MACKENZIE. Excuse me.

The COURT. Let him look at it.

Mr. CLEARY. May I have a few questions?

The COURT. On voir dire?

Mr. CLEARY. Yes, sir.

93 The COURT. Yes, of course.

Mr. MACKENZIE. I have just one more question.

By Mr. MACKENZIE:

Q. Did you witness the defendant signing the document?

A. Yes, sir.

Mr. MACKENZIE. I now offer Defendant's Exhibit 3, for identification, into evidence.

The COURT. All right, counselor, proceed with your voir dire on it.

Mr. CLEARY. Yes, sir.

#### VOIR DIRE EXAMINATION

By Mr. CLEARY:

Q. Where did you execute this particular document?

A. In our office, in the Federal Building.

Q. That is the building here, is that correct?

A. Yes, sir.

Q. Does that indicate the time, that notation, 11:30 a.m.?

A. Yes, sir.

Q. And that would be 11:30 a.m. in this building?

94 A. Yes, sir.

Q. How long is that after the arrest, in time?

A. Approximately two and a half hours.

Q. That warning was given after the defendant made his incriminatory statement in the motor vehicle, was it not?

A. This was presented, yes.

Mr. CLEARY. I have no objection to this exhibit.

Mr. MACKENZIE. What did he say—what was his response to your last question?

Mr. CLEARY. It was given after this statement in the car.  
The COURT. It may be admitted, there being no objection.

Mr. MACKENZIE. Would you strike the identification mark, please?

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 3.)

Mr. MACKENZIE. I have no further questions of this witness, your Honor.

The COURT. Very well, go ahead.

85 Mr. CLEARY. I have no further questions, your Honor.

The COURT. Very well, if not, you may step down, Mr.

White.

(Witness excused.)

Mr. CLEARY. I would just like——

The COURT. Yes, go ahead.

Mr. CLEARY. One short witness, the defendant in this matter, your Honor. I will be very short.

The COURT. Very well, call him.

Have him step up.

Mr. CLEARY. At this time, your Honor, I would ask permission to use the immigration interpreter for the ease of his court experience, and I think it would expedite things here.

The COURT. Very well.

Mr. MACKENZIE. Your Honor, at this time I would like to bring to the Court's attention that the interpreter may be testifying for the Government.

Mr. CLEARY. I understand.

The COURT. Are you willing to accept this condition?

Mr. CLEARY. Yes, sir.

96 The COURT. Very well.

Wait now until we get the interpreter to interpret the oath for you.

Come up here, sir, and raise your hand so that the clerk may swear you.

(Interpreter Albert Wimer duly sworn.)

The COURT. Very well.

The CLERK. Now, will you repeat the oath to him?

The COURT. Repeat the oath to him, please.

Dimas Campos-Serrano, the defendant herein, having been first duly sworn, through an interpreter, was called as a witness in his own behalf, and was examined and testified through an interpreter as follows:



## DIRECT EXAMINATION

The COURT. Let the record show that the oath was administered by the clerk, through the interpreter, so that there will be no question about it.

All right, let him sit down.

You may sit down.

By Mr. CLEARY:

97 Q. Would you state your name for the record, please?

A. Dimas Campos-Serrano.

Q. Are you the defendant in this case?

A. Yes.

Q. Do you remember the day on which you were arrested, 19 November 1968?

A. Yes, I remember.

Q. On that day, at any time—

Interpreter ACTELINA LA PORTE. Will you speak louder so I can hear it, too?

The COURT. All right.

By Mr. CLEARY:

Q. On that day, at any time, did you give consent to immigration agents to enter your apartment?

A. I was sitting on the bed. I had just arrived from work and the investigators came and with a friend of mine, inside of my apartment.

Q. But did you give consent for the investigators to come into the apartment?

A. No, I didn't.

Q. After the second entry of the immigration agents into your apartment, did you admit that it was a false alien registration card that you had?

98 A. They came in and they showed me the card, and they told me that the card was issued to a woman. Then I—then I told them that it wasn't mine.

Q. Did you make this statement in the apartment to the agents?

A. Yes.

Q. When were you first advised of your right to remain silent and your right to have an attorney to assist you?

A. That happened at the office of the Immigration Service.

Mr. CLEARY. No further questions.

The COURT. Anything, Mr. District Attorney?

Mr. MACKENZIE. Yes, just one or two questions, your Honor.

## CROSS EXAMINATION

By Mr. MACKENZIE:

Q. Would you ask the defendant what he understands the word "consent" to mean?

Mr. CLEARY. Your Honor, I am going to have to object to the question, the question of consent. The conclusion is  
99 to be drawn by this Court based upon facts.

The COURT. I think his objection is well taken, Mr. District Attorney.

Mr. MACKENZIE. Well, your Honor, this is a language problem here, and the defendant is stating that he did not give consent. I think it is very material.

The COURT. I think the question—I think counsel is right—whether he did or he did not bears upon the testimony of the agents that have testified and his testimony, and that is my job.

Mr. MACKENZIE: All right, your Honor.

The COURT. All right.

By Mr. MACKENZIE:

Q. Would you ask the defendant if he opposed the entrance of the immigration officers into the apartment in any way?

A. No, I did not oppose that.

Mr. MACKENZIE. No further questions.

The COURT. Very well, any further questions?

Mr. CLEARY. No further questions, your Honor.

100 The COURT. Tell him to step down, would you please?

(Witness excused.)

The COURT. Mr. Cleary.

Mr. CLEARY. I have no further evidence to offer on behalf of the defendant Dimas Campos-Serrano.

The COURT. Thank you.

Do you have anything?

Mr. MACKENZIE. Yes, sir, I have two very short witnesses, your Honor.

The COURT. I do have a pretrial set at 4:30.

You say you have two very short witnesses?

Mr. MACKENZIE. Yes, your Honor.

The COURT. Very well, bring them out.

Mr. MACKENZIE. I will call Mr. McLennon.

John T. McLennon, having been called as a witness herein for and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

By Mr. MACKENZIE:

Q. Mr. Witness, would you state your name, please?

101 A. McLennon, John T.

Q. What is your occupation, Mr. McLennon?

A. Investigator, Immigration and Naturalization Service.

Q. Mr. McLennon, calling your attention to November 20, 1968—of this year—did you have occasion to question an individual by the name of Dimas Campos-Serrano?

A. Yes, sir.

Q. What were the circumstances of that questioning?

A. I was asked to take a question and answer statement from Dimas by one of my co-workers who had another—another assignment he had to take.

Q. And did you in fact question the defendant Dimas Campos-Serrano at that time?

A. Yes, sir.

Q. Who was present during this questioning?

A. Mr. Dimas and Mr. Wimer, the Service interpreter.

Q. Did you state Mr. Wimer was an interpreter?

A. Yes, sir.

102 Q. Prior to conducting any inquiry or any questioning of the defendant, did you advise him of his rights?

A. Yes, sir.

Q. And this was in his own language,—

A. Yes, sir.

Q. Translated by the interpreter?

A. Yes, sir.

Q. Was the defendant Dimas Campos-Serrano then placed under oath?

A. Yes, sir.

Q. Would you describe the manner in which the questioning is conducted so that the Court understands how you approached the questioning.

A. Mr. Wimer is also a typist as well as an interpreter, and I would ask the question—Mr. Wimer would write it on the typewriter and then he would ask the question and the—

Q. Excuse me—

A. In Spanish.

Q. Yes?

A. And then he would type the answer or tell me what the response was, and then type the answer.

103 Q. I see.

I show you what has been marked Government's Exhibit 4. for identification, and ask whether or not you have ever seen that before:

A. Yes, sir.

Q. Does your name and signature appear thereon?

A. Yes, sir, on the last page of the statement.

Q. Did you in fact ask of the defendant the questions that are indicated thereon?

A. Yes, sir, I did.

Q. And to the best of your knowledge were the responses of the defendant described—or transcribed thereon?

A. Yes.

Q. Did you witness the signing of that document by the defendant?

A. I did.

Q. Do you see the defendant present in the courtroom?

A. Yes, sir.

Q. Would you point him out?

A. Sitting next to the—to the defense inter-  
104 preter.

Q. Could you describe him a little—

Mr. CLEARY. We have no objection—

The COURT. No, the record may so reflect that he identified the defendant.

Mr. MACKENZIE. Counsel, do you care to examine this?

Mr. CLEARY. Can I have just a short voir dire?

The COURT. Surely.

#### VOIR DIRE EXAMINATION

By Mr. CLEARY:

Q. In the time you took, and the place and the date of this particular document, what was that—what date was that?

A. Well, that form—that form, I-214, indicates the date and time and place.

Q. The 20th of November. What time during the day?

A. Well, to be sure, I would have to look at that to refresh my memory, but it was—I'd say it was from about 11:00 to 2:00—11:00 a.m. to 2:00.

Yes, time commenced was 11:50 a.m., time completed was 2:30 p.m.

105 Q. In your warning, sir, did you at any time make reference to the fact that any prior incriminatory statement could not be used against the defendant?

A. I don't understand the question.

Q. Did at any time in your warning—you went through enumerated rights here at the beginning?

A. Yes.

Q. Did you say that any prior incriminatory—incriminating statement made by you—meaning the defendant—could not be used against you?

A. No, sir.

Q. Did you make any statement of that nature to the defendant?

The COURT. I think he answered it pretty directly for you—

Mr. CLEARY. All right.

The COURT. That he did not.

Mr. CLEARY. I will withdraw my last question, your Honor.

The COURT. All right.

Mr. CLEARY. I have no further questions other than  
106 my standing motion to suppress this particular confession.

The COURT. Your standing motion will be overruled.

Mr. MACKENZIE. Your Honor, I now offer Government's Exhibit 4 for identification, into evidence. This is the record of the sworn statement of the defendant Dimas Campos-Serrano.

The COURT. It may be admitted into evidence.

What is the number of it?

Mr. MACKENZIE. Government's Exhibit 4, your Honor.

Would you strike the ID, please?

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 4.)

Mr. MACKENZIE. I have no further questions of the witness, your Honor.

The COURT. Very well, have you anything further?

Mr. CLEARY. No, sir.

The COURT. All right, you may step down.

107 Mr. CLEARY. Excuse me, I would have to ask the interpreter—

## CROSS EXAMINATION

By Mr. CLEARY:

Q. You don't know what the Spanish word for "appointed" means? In other words, right to appointed counsel.

A. Yes, I think so.

Q. Could you relate—

A. You mean on the form there?

Q. No, I want the Spanish word for it.

Do you remember the Spanish interpreter's word for the word "appointed"?

A. The statement on the form there, the word is "porporcionado".

Q. (Reading:)

If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.

Do you know what the Spanish phrase for that is, or what Spanish word the interpreter used?

A. Well, I could read it off of the form there, which would—which is what we usually do—

Mr. MACKENZIE. Your Honor, we object to this.

108 By the WITNESS:

A. (Continuing.) Rather than trust my memory.

Mr. MACKENZIE. Our next witness is going to be the interpreter in this case.

The COURT. All right, then he can ask him and enlighten all of us. I would like to know too.

Mr. CLEARY. No further questions.

The COURT. All right, you may step down.

(Witness excused.)

Mr. MACKENZIE. The Government would like to call Mr. Wimer now.

The COURT. Yes.

Albert Wimer, called as a witness herein for and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

By Mr. MACKENZIE:

Q. Would you state your name, please?

A. Albert Wimer, W-i-m-e-r.

Q. Mr. Wimer, what is your occupation?

109 A. I'm a professional, an official Spanish interpreter for the Immigration Service.

Q. Mr. Wimer, how long have you been so employed?

A. For the last four or five years.

Q. Mr. Wimer, calling your attention to November 20, 1968, did you have occasion to act as official interpreter during the examination of one Dimas Campos-Serrano?

A. To be honest with you, sir, I don't remember the date, but I remember the face of the defendant here.

Q. You say you see Dimas Campos-Serrano present in the courtroom?

A. Yes, sir.

Q. Would you point him out?

A. The last man there, sitting at that table.

Mr. MACKENZIE. Would you let the record reflect—

The COURT. It may reflect that he identified the defendant.

By Mr. MACKENZIE:

110 Q. Mr. Wimer, I show you Government's Exhibit 4, purporting to be the sworn statement of Dimas Campos-Serrano and ask you whether or not you have ever seen that before.

A. Yes, I have.

Q. Did you at the time this statement was taken act as interpreter?

A. Yes, sir.

Q. And did you translate the questions that were propounded by Mr. McLennon into the Spanish language, present them to the defendant to the best of your ability?

A. Yes, sir.

Q. And did you then transcribe the questions and answers that were made during that inquiry?

A. Yes, sir.

Q. Does your signature appear on this document?

A. Yes, sir, my signature is affixed to this document as witness and also as an interpreter in the Spanish.

Q. Did the defendant Dimas Campos-Serrano sign this statement in your presence?

A. Yes, sir, he signed this statement in my presence after I read it, the whole statement, to him—word by word,  
111 page by page, all the way down to the last page, in Spanish.

Mr. MACKENZIE. Thank you very much.



The WITNESS. And that's why he put his initials at the bottom here, after I read each page, and pages where there was any correction to be made, it was marked on this statement.

The COURT. Very well.

The WITNESS. According to this there was no corrections in this statement.

Mr. MACKENZIE. Thank you, I have no further questions.

#### CROSS EXAMINATION

By Mr. CLEARY:

Q. I would like to you to read at this time a sentence in the warning, appearing on Government's Exhibit 4, which says:

If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.

A. In the Spanish, huh?

Q. In Spanish, slow and loud.

A. (The following answer was given by the witness in Spanish.)

112 Mr. CLEARY. Could I have just one moment with my interpreter?

The COURT. Yes, of course.

By Mr. CLEARY:

Q. You have also used another phrase: "Do you wish to have a lawyer or any other person present to advise you?"

A. (The following answer was given by the witness in Spanish:)

113 Q. And did the defendant answer any other response other than the simple word "No"—was there any other words that he used?

A. No, sir. If he said any other words it would be written there in English.

Q. During the statement, at any time, in Spanish, did you mention to the defendant or did the defendant mention to you any statement that he had previously made to any immigration agents?

A. No, sir. As I said before——

The COURT. No, no, wait. You must wait until he asks you a question.

By Mr. CLEARY:

Q. On the question on the bottom of page 5, where you asked:

Did the officer ask you any questions about this mica?  
And the answer was:

After they examined the mica they told me this was a false mica.

And the question:

Did the officers ask you the date on which you entered the United States?

A. Yes, and I told them I entered "through Laredo, Texas, on March 17, 1965."

Was there any words in Spanish or any context in Spanish that would indicate when he told the officers that he entered at Laredo, Texas?

A. Sir, if there had been something else besides that it would have been written down.

The COURT. So your answer is no, is that it?

The WITNESS. I imagine that's the answer, your Honor.

The COURT. Well, he asked you if there was any other phrase and you said if there had it would have been written down. I want to make sure it's "No".

Mr. CLEARY. I have no further questions of this witness, your Honor.

The COURT. Very well, you may step down.

Thank you.

(Witness excused.)

The COURT. Anything further?

Mr. CLEARY. I would hope that the Court would give me just a few moments to summarize my argument on the various—

The COURT. Well, I will not let you do it this afternoon. I have two pretrials set here and I have two criminal cases set for trial tomorrow, so that you can come in here on—look at your book there on Thursday, Mr. Johnson—and I want all of the exhibits, unless you are going to use them in your argument.

Mr. CLEARY. Your Honor, I think I have a copy of almost all of the exhibits, except Exhibit 3.

The COURT. I would like to examine them.

How about Thursday?

The CLERK. Thursday is all right.

The COURT. Thursday morning at 10:30.

Mr. MACKENZIE. Your Honor, I have a grand jury session at 10:30. It has been set for several weeks now.

The COURT. What do I have at 2:00 o'clock?

You will be through by then, won't you?

Mr. MACKENZIE: Yes, sir, it's an hour and a half session.

The COURT. Two o'clock, and you will have fifteen minutes apiece.

Mr. CLEARY. It won't take longer than that, sir.

116 The COURT. All right, sir.

Mr. CLEARY. Your Honor——

The COURT. Yes?

Mr. CLEARY. With permission of the Court, one thing I would like stipulated among counsel, if I can save the requirement, that at no time was this defendant taken before the U.S. Commissioner on this matter. I checked with the Commissioner——

Mr. MACKENZIE. The Government will so stipulate, your Honor.

The COURT. I was going to ask the question, but then I thought I would wait until you got into your final arguments; but it is so stipulated that he was not taken before the United States Commissioner at any time, but went directly before the grand jury.

Mr. MACKENZIE. That's right, your Honor.

The COURT. Very well, let the stipulation be reflected in the record.

All right, this Court will stand adjourned until tomorrow morning at 10:00 o'clock.

(Which were all of the proceedings had in the within matter on the day and date herein.)

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1. In the United States District Court Northern  
District of Illinois Eastern Division

No. 68 CR 732

UNITED STATES OF AMERICA

vs.

DIMAS CAMPOS-SERRANO, DEFENDANT

Transcript of Proceedings had in the hearing of the above-entitled cause before the Hon. William J. Lynch, one of the judges of said court, in his courtroom in the United States

Courthouse; Chicago, Illinois, on Thursday, February 6, 1969, at the hour of 2:00 o'clock p.m.

Present: Hon Thomas A. Foran, United States Attorney, by Mr. D. J. Mackenzie, Assistant United States Attorney, on behalf of the Government; Mr. John J. Cleary, on behalf of the defendant.

Also present: Mrs. L. W. Hurney, District Director, U.S. Immigration and Naturalization Service.

2 The CLERK. *United States of America v. Dimas Campos-Serrano*, 68 CR 732.

Mr. CLEARY. Good afternoon, your Honor.

Mr. MACKENZIE. Good afternoon, your Honor.

The COURT. Good afternoon.

Are you ready to proceed, Mr. Cleary?

Mr. CLEARY. Yes, your Honor.

At this time, your Honor, with the Court's permission, I would appreciate taking advantage of the summing up on the weight of the various motions we have filed in the matter.

The COURT. Yes, please do.

Mr. CLEARY. The various motions filed by the defendant consist of a motion to suppress the evidence as a result of the search and seizure of the apartment located at 2159, I believe, California, where the defendant was arrested, and a motion to suppress the confession on the grounds of the lack of probable cause and the failure to give the adequate warning under the circumstances.

The evidence introduced on behalf of this defendant on the motion consisted of the three Immigration and Naturalization Service agents most connected with the offense. The defendant requested that he be given time or the opportunity to  
3 locate two critical witnesses—he doesn't have the funds to do so—the witnesses Rico and Ortiz, who have since been transported to Mexico, and that request was denied, and in his own behalf introduced only his own testimony.

The contention of the defendant is that the Immigration and Naturalization Service agents took out a task force arrest. This arrest was planned a day in advance, when adequate opportunity could have been made to secure an appropriate arrest warrant, if deemed necessary, or in the alternative appropriate search warrant if certain quarters were to be examined.

These agents proceeded out, eight of them as we heard, and during the day, although he didn't know how many persons were scheduled to be taken into custody, fifteen to sixteen were in fact arrested, detained, physically restrained of their liberty, taken into custody as a result of this particular procedure.

One of the ones in the early morning hours, at 8:00 o'clock, at the Roulon Corporation, was Mr. Rico. Mr. Rico was arrested at his place of employment.

4 Now, we hear, through the statement of the INS, which I contend, although the competency the Court has ruled on, the question of self-serving, that they wanted to give the man the opportunity to get his clothes, and thereby proceeded to where he was residing on the Southwest side of Chicago and California Avenue.

There they gained entrance to the apartment.

Now, the Fourth Amendment as we know is no longer limited to physical or geographic circumstances. The issue protected against the Fourth Amendment is the right of privacy, and within a multiple apartment we have certain zones of privacy of certain defendants.

I would dare say that this question about looking for clothing would raise one's eyebrows as to the consensual aspects involved, especially when we heard from the agents no detailed circumstances as to the type of building that they secured. It raises grave doubts that they were so overwhelmed with this beneficial interest of the defendant that they had to follow him out into the apartment to do these types of things.

5 The first entry was taking place. The defendant was examined. A man went up to him—I'm an INS. Did he have any type of suspicion? Sure, he had suspicion. One of the roommates there was a man who had already been arrested for illegally being in the country, and to apply an old cliché, birds of a feather kind of flock together.

He walked over, and the defendant raises no question now other than how did he get into that apartment. The defendant contended and testified on the stand, he didn't consent to him coming in. He only consented to his friend.

Could the man have asked that the friend pass out the clothing from the apartment? Was it necessary for the agents to go in? We don't know. That wasn't in the hearing. This Court doesn't have that evidence as to that particular aspect

of consent. We know that this defendant didn't consent to the intrusion of the investigators. Once in, they identified themselves.

Discounting the place now, they asked him to produce it. We are not challenging at this time the statute under which  
6 these men have a right to examine people as to their nationality. All we are saying is that he did ask.

An experienced agent examined the alien registration receipt card. He was not, so to speak, uninformed or naive. He further asked for the social security card, and he even went further and said, "Where is your passport,"—inquired about that.

He accepted the explanation of the defendant; he examined them.

We hear some talk about the lighting condition involved. The agent, I believe, passed it to his fellow agent. In any event, an experienced agent looked at these particular documents, found them satisfactory because he then departed, went out of the apartment, back down into the street.

There we have the encounter with Mr. Ortiz, another tenant. Of course, as they pointed out, the agents did not know he was from the same apartment, but he sure knew what apartment he was coming from when they moved back into the same area.

What did the agent very honestly say, Agent Burroughs?  
7

He said, and I think he said it very well, we caught one fellow, Ortiz, with a bad card, and we're not in a position really, now, to go into that arrest under the Wong Song Doctrine as being an improper arrest because we don't have the man arrested, Mr. Ortiz, whom we requested; but, we just have to work with that circumstance.

He had this mind, this orientation we might call, using the language of Escobedo, focusing on a certain defendant—if one man in that room had a bad card, another man might. He then walked up into the room, when he's in there and he says, "Let me see your card."

When he asked for that card, what becomes critical? What was the nature of my motion at this time, the motion to suppress, and on the warning requirements? The question turns on the Schmerber Doctrine, *Schmerber v. California*, on testimonial evidence—we know they could have probably required the man to give certain blood samples, physical requirements, whatever it might be, once taken into arrest.



But at this time, when we had narrowed it down to this particular man, this defendant, they said, "Produce a card,"  
 8 a card that he thought was in fact altered, or in some way damaged, because he just arrested his roommate who had an altered card.

He then takes that card——

The COURT. Now, you are misstating it a little bit. The defendant handed the card to him, didn't he?

Mr. CLEARY. I think he asked for the card, your Honor.

The COURT. All right, supposing he did, under the inquiry, under the Act he'd have a right to ask him, but he didn't search him.

Mr. CLEARY. No, he didn't search him.

The COURT. All right.

Mr. CLEARY. In that particular sense at that time.

The COURT. All right, go ahead.

Mr. CLEARY. He asked for the card, and my contention is before—once he had the orientation of mind that this defendant, in fact, possessed a document that was altered, false, or in some way the possession thereof constituted a criminal offense, he should have warned him that the production of this particular card, being testimonial nature, not just merely  
 9 physical, that that would violate his privilege against self-incrimination, and by failing to so warn him, they obtained that card in violation of the Fifth Amendment.

The COURT. Would you say that would be true, counselor, in the event that a police officer asked me for my driver's license on a probable violation of the traffic laws, and I gave him the card, but knowing that the card that I had was false—would you say that that would apply in that case?

Mr. CLEARY. No, sir, and it is rather obvious, and the reason I think it is rather pertinent in this case—and I appreciate your Honor——

The COURT. No, I would like to know.

Mr. CLEARY. No, it is very excellent, your Honor. In fact, you are putting the finger right on my point, and there is a big distinction in that case.

If I was a police officer and I go up to your car, I have a right, once you are on the highway, to go up to you and ask you because I am arresting you for speeding or whatever else the case might have been, hence you are required to produce  
 10 your license.



But if, for example, an individual told me that that person driving that car had a false and altered vehicle registration, and I had reason to believe that you had in your possession a false driver's license, which is an offense against the law of the State of Illinois, and if I were to walk up to you and I would say, "Let me see your driver's license," which under ordinary circumstance might be permitted, I think, and the law would require, knowing these particular circumstances, I am securing evidence against you for a criminal offense, possession of the card.

The COURT. You are taking the position then that he had been advised that the card had been false?

Mr. CLEARY. Yes, sir.

The COURT. All right.

Mr. CLEARY. And I say in this case the same circumstances exist because the agent in this case had good cause—in fact, this was the reason for conducting the inquiry because he was the same agent that was present when the other agent examined the card, and again the idea that the circumstance arises 11-12 is that the other experienced agent had given this man—in the language of the streets—a pass, so to speak, and had come back to overcome the prima facie presumption of the experience of the other officer.

Once the card is presented then the question turns on the, I think, the issue as to the concession. Here I think the procedural aspects shift under *Miranda v. Arizona*, where the heavy burden is then placed upon the Government to show, one, the warning in detail given, and, two, the requirements as to the waiver—heavy burden, I think is the language of the opinion—so that the two-aspect offense, the first question as to the warning, we have a conflict as to fact which your Honor is going to have to resolve, and that is the question as to where the incriminatory statement was given.

The defendant contends the statement was given in the apartment. He said he told him when he examined him at that time. The agent, on the other hand, say it was not—the first incriminatory statement was given once he was taken into the  
13 vehicle, and they indicate—and again I think it is important to note—the manner in which these rights were given. Substantial constitutional rights were given, and I asked this in my line of questioning to make sure the Court would be informed of it, as they were walking down the stairs out to the

ear, and also the fact that we know this particular agent was not a native Mexican, even though he did demonstrate the warning in Spanish to the Court, and he went with a certain amount of precision. One can imagine without too much difficulty what was taking place—walking a man down, a foreigner, speaking in a different language to the man, even though speaking in Spanish, conveying to him the nuances connected with the constitutional rights, one, the right to remain silent; two, anything to be said can be used in a court of law against him. He went on in great detail in his warning to point out administrative proceeding; three, the right to counsel; and four, that counsel would be made available, and even further as the requirements

- 14 of Miranda go, counsel would be present during any interrogation, and from that, I would say cursory warning, did the defendant fully understand that at the time they were talking to him in the vehicle that he had the right to have the assistance of free counsel present, and, of course, his indigency has been since demonstrated, and that is why I serve now as appointed counsel. The question is, I think it raises some serious doubt.

Number two, the warning we heard left out one important aspect, I believe, and again the Court overruled me on this, only the court reporter has it down, but I don't believe that the warning, as stated to us by the agent in English, made reference to the right of appointed counsel. He said you have the right of counsel, but it didn't make reference to free counsel, and again I have to leave it to the record on that particular point.

The defendant got on the stand and he was available for any type of cross examination the Government so chose. We put him up there, tendered him to see what type of understanding he had as to the warning.

He said, "I made a statement."

- 15 There is no question he made the statement at the Immigration office. The question is, of course, the understanding of his particular right—a rather detailed statement.

A point contended by the defendant in this particular matter is that if the incriminatory statement came out at an earlier stage, prior to the adequate Miranda warning, then any subsequent action would be wiped out. This is the cat-out-of-the-bag theory.

I think Wong Song is the doctrine about the tainted evidence, fruit of the poisonous tree, that if the prior warnings were inadequate the incriminatory statement having been made, unless there was some type of intervening circumstances—I think I brought out there was no statement by the agent that prior incriminatory statements would be of no value for use against him.

I think further another aspect to be considered on the motion was the fact that we have here a simple offense. I am not one to overemphasize the legal ease of the circumstances

when we consider from the viewpoint of an agent. The  
16 wrong done was an altered false alien registration card.

We have some contention, at least in the briefs of counsel, that this was not the offense for which he was arrested, there were some other offenses. He was arrested for only one thing, and if the Government, accepting their contention at this time that it constituted an offense of 18 USC 1546, under Rule 5, and under the Immigration Law itself, under the statute itself, Immigration Title 8, this man must have been immediately brought before, without reasonable delay, before the U.S. Commissioner. The Commissioner is on the 24th floor.

Where did they bring the man? They brought the man to this very same building but didn't bother taking him to the Commissioner so that he could be apprised of his rights.

The COURT. When was this statement made, November 20 or 21 of 1968?

Mr. CLEARY. There were two statements. The written statement was made on the 20th.

The COURT. That's what I am talking about.

Mr. CLEARY. The written statement was made  
17 on the 20th, a day after the actual apprehension—in fact, approximately 26 hours because it was executed 2:30 p.m. on the 20th. He was arrested, I believe, in the morning hours of the 19th.

The defendant was brought to a building where he could have been afforded these rights, where he could have gotten, so to speak, to the heart of the matter at an earlier stage.

Here he is, without counsel, and the question is the following day when examined at this Immigration hearing—I am not contesting the right of the Immigration people to hold this hearing. I think they have a perfect right to hold this hearing.

I am just saying when they plan to charge a man with a felony violation, they should first bring him before the Commissioner and then follow through on their administrative proceedings, whatever they might be.

I would like to sum up by saying that the question here is that we had a case where there was absolutely a warrantless search. There was no warrant whatsoever.

The question is, when they arrested Mr. Ortiz and  
18 they went back into his apartment—I don't know exactly, and I can't spell it out on this time spectrum, precisely where it was, whether it was two feet outside of the apartment or when they were knocking on the door, but at that time that agent said, we got one man from that apartment with a bad card.

What should he have done? Should he have gone in on his clothes and examined him, or should he obtain a search warrant?

I am saying that unless you have unequivocal, clear and unrenounced consent—I mean even specifically, almost to going to the defendant to enter that apartment, there should have been no entry without a search warrant.

I think the most recent cases emphasize over and over again the privacy—and I knew what they were going in to talk to him about—and again, the agent couldn't tell us what type of clothing, if they are doing this particular personal type of service to a defendant.

There was no warrant to do this, and I cannot say that the  
Government has any justification by consent. They  
19 can't certainly call it a search incidental to an arrest because they made the arrest of Mr. Ortiz out in the street, and I think that is somewhat expanding it. I can't see the other exigent circumstances.

I know counsel cited *Terry v. Ohio*. That is a protective search, and if they frisk my man down for a knife, a .45, a blackjack, a stiletto, I say go to it, I'm for it every day of the week. I don't believe federal agents should be unnecessarily killed.

On the other hand, I do not feel federal decisions should be overextended because of circumstances to which they do not apply.

One interesting note by Justice White in his concurring opinion in *Terry v. Ohio*, he says, "We have to be very care-

ful—" and I can't quote the exact language—maybe I can, if the Court would permit.

The COURT. Yes.

Mr. CLEARY. It is a short phrase.

This is by Justice White, 392 U.S. 1, page 34:

Of course, the person stopped is not obliged to answer.

20     Answers may not be compelled, and refusal to answer furnishes no basis for arrest, although it may alert the officer to the need for continued observation.

In the opinion here was that when the agent went up there suspecting this particular thing, he had no right—if he thought he had these grounds he could go before the Commissioner and get an arrest warrant and accompanying search warrant, if he deemed it appropriate.

However, with the arrest warrant we know he could have gained access to the apartment to apprehend the individual. He didn't do it. There was no proper intervention, supervision of an impartial judge, commissioner, as the case might be, under the new law a magistrate, to superintend the requirement of probable cause, to protect this man's limited rights and to provide the privacy he had in this multiple dwelling apartment, limited though it might be, humble though the circumstances might be. He was entitled to this protection, notwithstanding the rather collective procedures used by the INS.

21     Now, the question as to waiver of rights, we have a man with limited background. The Court had a chance to observe him on the stand. He does not have the facility—I believe the confession, the document entered into evidence by the Government, points out he has no prior criminal record so as to be, so to speak, informed of these procedures, to know what the police status is, confronted by authority in a strange land, and charged with a most serious felony offense—what was facing him should there have been certain warnings given—were those warnings, in fact, in detail given so that he fully understood them, and having fully understood them that he intelligently and knowingly waived them. I say the whole circumstances here show no adequate waiver of any right and cast grave suspicion as to whether or not any adequate warning was given.

For these reasons we move to suppress the written confession as a result of the prior oral incriminatory statements for which

no adequate warnings were given, which under the circumstances appear almost to be coercive.

22 Also, we move to suppress the alien registration receipt card on the grounds that the agent knowing that this was testimonial evidence, having reason to focus in and suspect the defendant, asked for its production, knowing full well that it could in fact incriminate this defendant, and also further to suppress any other evidence they might have taken as a result of this unlawful arrest.

Thank you very much, your Honor, for your kind attention.

The COURT. Mr. District Attorney, do you have something to offer?

Mr. MACKENZIE. Your Honor, prior to commencing my oral argument, the Government would like to offer into evidence Government's Group Exhibits Nos. 5, 6 and 7, for identification.

Group 5 consists of the certified copies of the application for the order to show cause, for the order to show cause and notice of hearing. It contains a certified copy of the warrant for arrest of alien. It contains a copy of notification of bond pending determination of deportability.

23 Government's Group Exhibit 6, for identification, consists of certified copies of the special inquiry officer hearing worksheet and the decision of the special inquiry officer.

Again, both these exhibits are in relation to the defendant's deportation proceedings.

Finally, Government's Group Exhibit No. 7, for identification, consists of certified copies of the Immigration records of Dimas Gloria Vargas Garcia, who is in fact the authorized holder of Alien Registration Receipt Card No. A-14713099. Included in this file is her application for status as a resident alien and her application for a new alien registration receipt card.

The COURT. Let counsel examine the exhibits. Give him a chance.

Mr. CLEARY. There is one question, your Honor, I have as to certain of these documents, and I don't want to unduly delay the Court's consideration of the matter—

The COURT. That is all right.

Mr. CLEARY. But it indicates, for example, the warrant in Government's Group Exhibit 5, for identification—it has

24 Mrs. Hurney's signature, L. W. Hurney, "Witness my hand and seal, 19th day of November, 1968, at 9:00 a.m.



The COURT. Is that the certification of the group document?

Mr. CLEARY. No, this is the—

Mr. MACKENZIE. This is the signature—

Mr. CLEARY. —of a warrant for the arrest of the alien. Unless Mrs. Hurney was psychic, I don't believe this document is—

The COURT. What date does it bear?

Mr. CLEARY. 19 November, 9:00 a.m., when they were arresting Mr. Rico on 19 November 1968, about 9:00 a.m. In fact, they didn't accomplish the arrest of the defendant Campos-Serrano until about 11:00 o'clock in the morning, and the thing that raises some doubt in my mind is if they had a warrant out for him that puts a completely different complexion on the case.

The COURT. When was that document signed?

Mr. CLEARY. It says, "Witness my hand and seal 19th day of November, 1968, 9:00 a.m., and Mrs. Hurney is here, maybe she would want to comment on it. It's just a question, on its face it appears to be patently inconsistent with the other evidence offered by the Government. I'd have to move that it be excluded.

25 Mr. MACKENZIE. Your Honor, it is not inconsistent. If necessary, we can call witnesses to show that Mrs. Hurney was called by the agent who gave her a list of—if you recall, Agent Jacobs said he went to the vehicle and asked the defendant what his real name was.

The COURT. I will permit the document to come in at this time, subject to further evidence as to authenticity.

I believe you are offering it under what, Title 8, Section 1033, is it?

Mr. MACKENZIE. Yes, your Honor.

The COURT. Is that correct?

Mr. MACKENZIE. All these documents have been certified here.

The COURT. Well, I mean, that may be so, but we don't permit indirectly what you cannot do directly by merely having it certified, and something may be erroneous or hearsay.

Now, I will accept it at this moment, subject to your right—

26 I am going to reserve, for your information, my ruling on his motions until you present whatever you want to present on the motion to suppress.



Mr. CLEARY. At this time, your Honor, I would also technically object on the grounds that the custodian has not testified as to the ordinary and necessary business records.

The COURT. He doesn't have to under the certification by a department of the Government under Title 8, I think Section 1033.

Mr. MACKENZIE. It's 103, I believe, your Honor.

The COURT. The other section is Title 18, where it's made in the ordinary course of business. Mr. Cleary, I think you'll find that to be correct.

Do you have all these exhibits, Mr. Cleary?

Mr. CLEARY. I'm sorry. I've just gone through 6. I haven't got to 7 yet.

The COURT. Very well, we will recess for a few minutes to let you look through them. It shouldn't take you more than five minutes.

Mr. CLEARY. No, sir.

The COURT. I will be back at quarter to 3:00 promptly.

27 (A short recess was taken.)

The COURT. Mr. Cleary.

Mr. CLEARY. I just wanted to make one additional comment about this evidence, having looked at the statute involved, I think it's 8 USC 1103—

The COURT. 1103, I said 1003.

Mr. CLEARY. Yes, your Honor.

My contention is, although these would properly be authenticated for any deportation proceedings and would probably be even proper in any related activity to Title 8, the charge here involved is Title 18 and therefore I would say that Federal Rules of Criminal Procedure and the statutes pertaining to business records would be applicable, and not this section which is merely an authorization section to allow the Attorney General to, in the Code of federal regulations, announce this authentication procedure, and for that reason I would again restate my objection.

The COURT. Your objection may be noted of record, but at this time I will permit the document to be received.

(Said exhibits, so offered and received in evidence,  
28 were marked, respectively, Government's Group Exhibits 5, 6 and 7.)

Mr. MACKENZIE. Thank you, your Honor.

The COURT. Do you have anything else, Mr. District Attorney?

Mr. MACKENZIE. Yes, your Honor.

Are you permitting the documents into evidence subject to the introduction into evidence in support of his original objection there?

The COURT. I don't get you.

Mr. MACKENZIE. Pardon me?

The COURT. I don't comprehend.

Mr. MACKENZIE. Are the documents, with the exception of the warrant that was objected to by the counsel for defendant, being allowed into evidence at this time?

The COURT. You are running your case, counselor, and this document was signed, apparently, according to your statement, as a result of the telephone call——

Mr. MACKENZIE. That's right, your Honor.

The COURT. Made out here in this building and from  
29 the evidence that I have heard that the defendant was under arrest at the time that this warrant had been issued.

Mr. MACKENZIE. That is correct, your Honor.

Mr. CLEARY. Your Honor, I just—I don't know that information——

The COURT. Well, you tell me.

Mr. CLEARY. What I would like to do is call Mrs. Hurney to the stand, if I could, because it's 9:00 a.m., and I want to see what the agent says as to the time they were at the Roulon Corporation, from 8:00 to 9:00——

The COURT. Are you calling her as an adverse witness?

Mr. CLEARY. Well, in fact, if she wanted to make a statement explaining that I would accept that. I wouldn't even require the oath.

The COURT. Mrs. Hurney, do you want to make a statement on the warrant?

Mrs. HURNEY. Sir?

The COURT. Do you want to make any statement to the Court on the warrant, the circumstances under which it was issued?

30 Mrs. HURNEY. Your Honor, it is customary when an investigator takes an alien into custody, or a group of aliens, to telephone me or someone who has delegated authority and give him a description of the person or persons whom they

are taking into custody and procure authority to bring them into the office, because if they were not taken into custody it would be presumed that they would not show up.

Therefore, I do ask such things as who they are, what nationality they are, how they came in, et cetera.

In the case of Mexicans, of whom we have thousands, of course, I could not possibly, your Honor, distinguish between this gentleman and that gentleman.

The COURT. I understand. I just wanted an explanation; but, I want to read this warrant.

Mrs. HURNEY. May I say that when they do bring them in they then prepare that immediately and bring it up for my signature.

The COURT. This is on the basis that he was in the United States as an alien, is that correct?

Mrs. HURNEY. That is correct.

31 The COURT. Not under the basis that he had committed a felony at this time?

Mrs. HURNEY. No, your Honor. He was an alien illegally in the United States—

The COURT. I will accept the explanation—yes?

Mrs. HURNEY. He was an alien, as far as we know, illegally in the United States, because he is unable to show that he is legally here.

The COURT. Yes.

Mr. CLEARY. Could I ask Mrs. Hurney a few questions, your Honor?

The COURT. You may ask her, of course.

Mr. CLEARY. Do you remember the time on this document—9:00 a.m.?

Mrs. HURNEY. I couldn't possibly remember the time. This man was brought in with a large number of other aliens, and I could not possibly honestly say I remember the exact time.

Mr. CLEARY. Could it have been possible that this document could have been executed, say, in the afternoon of the 19th, rather than at 9:00 a.m., and pre-timed, or what you want to call it?

Mrs. HURNEY. That is most unlikely.

32 The COURT. Very well.

Mr. CLEARY. You have no recollection of who the agent was that called you on this particular case?

Mrs. HURNEY. I couldn't possibly say.

The COURT. Very well.

Do you have anything else, Mr. District Attorney?

Mr. MACKENZIE. No, your Honor, other than my argument, your Honor. I have no further evidence.

The COURT. All right, go ahead, sir.

Mr. MACKENZIE. Your Honor, the facts as testified to by the Immigration officers, Jacobs, Burrough and White, clearly indicate that the presence of the Immigration officers in the apartment of the defendant on November 19, 1968 was with the consent and at the request of Miguel Rico and Jose Rodriguez Ortiz, both men having requested they be allowed to return to their apartment to collect their belongings.

The permission to enter the apartment need not have been expressly given by the defendant herein. It is sufficient  
33 if the permission or the consent to entry is given by co-tenants who had equal use and occupancy of that same apartment.

Additionally, the purpose of entry was not to search the premises, but rather to allow these two men to gather their belongings. This request was made by them and it was for their sole benefit.

The only inspection that was made by the agents was of the area that the men indicated they wished to obtain their belongings from, and it was made only as to a cursory examination to determine whether or not there were weapons present.

The facts as the agents testified were that they encountered the defendant Dimas Campos-Serrano both times, and that he was questioned concerning his rights to be in and remain in the United States.

The officers of the Immigration and Naturalization Service have this power to question, without warrant, any alien or person reasonably believed to be an alien, as to his rights to be in and remain in the United States.

This authority comes from Title 8 of the  
34 United States Code, Section 1357, subsection (a), subsection (1), and cases supporting the constitutionality of that statute, *United States v. Correa*—

The COURT. There is no question about that in my mind.

Mr. MACKENZIE. All right, your Honor, the presentation of the altered alien registration receipt card, Government's Ex-

hibit 1, in evidence, and the defendant's representation that he was a resident alien unlawfully in the United States, made in response to the Immigration officers' request for proof of the defendant's right to be in and to remain in the United States, without first being advised of his rights, did not violate the defendant's rights under the Fifth Amendment for the following reasons: First of all, the factual circumstances confronting the Immigration officers provided a reasonable basis for any suspicion that the defendant was an alien.

The officers had statutory authority to question any suspected alien as to his right to be in and remain in the United States.

During the course of a routine inquiry, without the  
35 agents exercising any restraint over the defendant, the defendant voluntarily presented an alien registration receipt card as proof of his lawful status as a resident alien.

The COURT. Was this on the second visit or the first visit?

Mr. MACKENZIE. On both visits, your Honor.

The COURT. He was asked for the card?

Mr. MACKENZIE. That's right, your Honor.

The COURT. All right, go ahead.

Mr. MACKENZIE. As soon as it was determined the alien registration receipt card presented by the defendant was altered, this being the second—the return, the second visit to the apartment—the defendant was immediately taken into custody. He was advised in his own language of his rights.

Prior to his being taken into custody and advised of his rights, the defendant asserted he was a resident alien lawfully in the United States, and it was only after that he had been taken into custody and advised of his rights, his warnings given him, that the defendant subsequently admitted his true identity. This was testified to by Agent Jacobs that he approached  
the defendant in the car when they were stopped for gas

36 and asked him for his true name.

The COURT. Then again in the statement he admitted it, didn't he?

Mr. MACKENZIE. Yes, at the hearing.

The COURT. Then why wasn't he taken before a magistrate or a judge forthwith?

Mr. MACKENZIE. All right, your Honor, let me just jump to that point then.

The defendant's counsel here is laboring under the impression that the defendant's arrest was for a felony offense.

2

The COURT. No, I understand, and I do not buy that. I mean, this is the position and the concern of the Court. The officers here had a perfect right under the provisions of the law to take him into custody on the violation of the Immigration laws for being here illegally.

What I am concerned about is when the disclosure was made that he had a falsified card, which is a felony, and made it to the officers when they took him into the gasoline station, he then made it in a statement on November 20.

37 My question is, when the felony was disclosed to them and he admitted it, this changed the status that there was a felony, and why wasn't he brought to a magistrate forthwith?

Mr. MACKENZIE. Your Honor, let me present this—it will require just a little—

The COURT. This is the point that concerns the Court.

Mr. MACKENZIE. It will require me to jump just a little bit ahead of my argument.

The COURT. Go ahead.

Mr. MACKENZIE. The Government's Exhibit 7 here is a file of the Immigration record of Dimas Gloria Vargas Garcia. After the apprehension of the defendant herein the Immigration authorities, using the number that they picked off of this document, which is Government's Exhibit 1, requested this file. It came, I believe, from the San Antonio office of the Immigration Service.

It was not until receipt of this file that a determination could actually be made that there was a criminal violation, or a possible criminal violation.

The COURT. You mean the admission of the defendant wasn't probable cause?

38 Mr. MACKENZIE. Your Honor, the admission of the defendant in the context of the proceedings that were going on—he had been advised of all of his rights, all of the warnings had been give him, bond had been set. The defendant was in an administrative proceeding.

The alteration of the card, the circumstances surrounding this, the procedure that the Immigration authorities followed, would require that some documentation, some proof as to this card, be submitted, and this is what the file—

The COURT. You know, say I am sitting here on a civil matter, and in the course of hearing that matter there is disclosed



by the evidence a crime, I can immediately declare that I am sitting as an examining magistrate and hear such evidence as I desire to do so, if a felony is disclosed in my presence, and I can do one of two things, either discharge them on the basis of the evidence or, forthwith, hold them to the grand jury.

The difference that bothers me and concerns me is that he was arrested for a misdemeanor by his being in this country without properly being here. The officers were advised of his admission prior to the time his statement was taken, and then in his statement there was a clear admission that this was an altered card. That's what bothers me. There is a Commissioner in this building, and he was not brought before a judge until December 16, which is nearly a month after the time a felony was disclosed.

Mr. MACKENZIE. Your Honor, he wasn't even arrested on a misdemeanor. He was arrested for violation of the Immigration laws. The failure—and I think this is of extreme importance, your Honor.

The COURT. Well, it's more civil in nature, I grant you that.

Mr. MACKENZIE. The failure to have in his possession a valid Immigration document—

The COURT. All right.

Mr. MACKENZIE. This is the key, that the proceedings that took place in the Immigration offices were an administrative proceeding.

The COURT. Not when a felony is disclosed to them.

Mr. MACKENZIE. Your Honor, I think that once the—when the administrative—the statute provides for setting of the bond and for the detention of the defendant throughout the Immigration proceedings, and provides that the defendant may be held for criminal proceedings thereafter.

The COURT. Well, maybe so, but Rule 5(a), proceedings before a Commissioner, is contrary to what you state.

(b), it says: "An officer making an arrest—"

Mr. MACKENZIE. Your Honor—

The COURT. Just a moment now.

An officer making an arrest under warrant issued upon complaint or any person making an arrest without a warrant—

which is the case in this instance, although it had been issued for being in the country without a card—



shall take the arrested person without unnecessary delay before the nearest available Commissioner or before any other nearby officer in power to commit persons charged with the offenses against the laws of the United States—

41 You subsequently indicted this man for a felony.

Mr. MACKENZIE. Yes, your Honor, but this was after the Immigration authorities had in fact made a determination as to the card and—

The COURT. The administrative officer has no right under the law, and the courts have said this many times, that the administrative officer has no right to interject police officers, as they are referred to in one case which I cannot at the moment recall, to interpose their judgment for the independent judgment of a magistrate or a judge who may be sitting.

Mr. MACKENZIE. Your Honor, may I just—

The COURT. You may, of course. I will hear you out.

Mr. MACKENZIE. Under Title 8, Section 1252, apprehension and deportation of aliens, arrest and custody, provision (a) provides that:

Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may upon warrant of the Attorney General be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General, and pending such final determination of deportability be continued in custody or be released on bond in the amount of not less than \$500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe.

42 The COURT. I have no quarrel with that at all. They certainly have the right to do that.

Mr. MACKENZIE. I believe, your Honor, that the Immigration proceedings proceeded with dispatch, and they did so because of the waiver form that was signed by the defendant in this thing requesting an early hearing on this matter before Immigration authorities. This is contained in one of the documents in Defendant's Group Exhibit 5.

The COURT. They are not a judicial officer. There is a distinction, and they so said in *Miranda*, and they so said, I believe, in another matter, in other cases that I cannot at the moment recall.

43 Mr. MACKENZIE. The section that the defendant cites herein, your Honor, says that this is the power of Immigration officers and employees, and it states in Section 4—this is Title 8, 1357, subsection 4:

To make arrests for felonies which have been committed and which are cognizable under the laws of the United States regulating the admission, exclusion or expulsion of aliens, if he has reason to believe that the persons so arrested is guilty of such felony, and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest—

The COURT. There is no question about that. They have a right to arrest, and they have a right to arrest for he is here merely as an alien.

Now, step 2, if in the process of arresting him and detaining him, which they in my judgment have a perfect right to do under the code, they determine that a felony has been committed—this is the distinction—then they must with dispatch  
44 patch bring him before an examining magistrate, and that is the decision of the Supreme Court, and I will give you one that—I'm not cutting you off at all, you know, but when you get to these points I am trying to clarify them for myself.

In *United States of America v. Augusto daSilva Valente*, which is quoted at 155 F. Supp. 2d, at 577, wherein they had a similar situation here, and the judge in that case, who was Judge Aldrich, and this is a '57 case—there he said he had rendered an opinion which the Government had come in and asked to either be vacated or amended, in which he held they hadn't any right to do, which is similar to the situation we have here:

The Government takes exception to my earlier opinion—  
meaning Judge Aldrich's opinion—  
on the ground that the Immigration office had a right to arrest the defendant without warrant under subsection (a)(2), Section 1357, and interrogate him thereunder, and that if the defendant in the course of that examination chose voluntarily to admit something else,  
45 that was his affair. It points out that he was not arrested for a felony under subsection (a)(4). All this I assumed before.

Quoting Judge Aldrich further, he said:

It seems to me that one only has to state the Government's full position, and it answers itself. Before the defendant was arrested the Government knew he had committed the offense for which he is now being tried (if he ever did commit it), because the alleged statement had been made to the same Government employee who later arrested him. Of greater importance, at the time he was arrested the defendant immediately admitted that he was an alien, made no claim that he was properly in the country, and agreed that he should be deported. No lengthy examination—

And, of course, here we have him admitting that he was not only an alien, but that he was here with an altered card which of course makes it a very serious offense of being a felony.

46 No lengthy examination was needed, so far as subsection (2) was concerned. If the detention under subsection (2), and interrogation to obtain an admission in aid of a prosecution for a subsection (4) offense for which he could not have been detained, was not a deliberate subterfuge, the effect was the same. The result is not to be countenanced.

I feel that we have the same situation here and, therefore, the Court here will rule—

Mr. MACKENZIE. Your Honor, could I say—

The COURT. That the search—well, I know the facts. I've been given plenty of time to think about it. I have researched the law on it and insofar as the motion is concerned to suppress the evidence of the card as obtained in the apartment, that will be denied.

The Court is of the opinion that on request by the agents this was voluntarily given to them.

On the question of the confession and on the question of his admitting it in the car, that will be granted.

47 And the motion to dismiss will be denied at this time.

We will hear it upon the merits as to such evidence as the Government cares to produce.

Now, do you want a date, Mr. District Attorney?

Mr. MACKENZIE. Yes, your Honor.

The COURT. Mr. Cleary?

Mr. CLEARY. Yes sir, I thought—possibly maybe I am a little bit presumptuous, but maybe even the case might be heard today?

The COURT. No, I'm not going to. The Government is going to have to be given time to consider what—and you will also—I don't know how you will proceed. That is up to the District Attorney, but I am not going to push to a trial today, nor would I do that to you either.

Mr. CLEARY. Yes, sir.

The COURT. It is a '68 indictment, so I will put it over—it will only take probably a day at the most to try it.

Mr. MACKENZIE. I would imagine, your Honor.

Mr. CLEARY. Yes, sir, this was a waiver of a jury trial.

48 The COURT. All right, this is the 5th day of February.

Put it in the last part of February, Mr. Johnson.

Mr. CLEARY. My client is still in jail for lack of \$100, and I was hoping possibly in light of the Court's ruling today—

The COURT. No, I am going to put it over until—we have a case that has nineteen defendants in it and it may not go on that particular day, so we will put you on the 24th of February, at 10:00 o'clock. That is the earliest day I can give you.

Mr. CLEARY. Your Honor, will I be allowed to proceed at that time with questions on the poison fruit, so to speak, doctrine?

The COURT. You proceed with your theory of your defense in this case on the merits, presenting such evidence and asking such questions as you so desire, and I will rule on them at that time.

Mr. CLEARY. Yes, sir.

The COURT. All right, adjourn the Court, Mr. Marshal.

(Which were all of the proceedings had in the within cause on the day and date herein.)

17645

[U.S.C.A.—7th Circuit, Filed, May 23, 1969, Kenneth J. Carrick, Clerk.]

1 In the United States District Court, Northern District  
of Illinois, Eastern Division

No. 68 CR 732

UNITED STATES OF AMERICA

vs.

DIMAS CAMPOS-SERRANO, DEFENDANT

Transcript of Proceedings had in the trial of the above-entitled cause before the Hon. William J. Lynch, one of the judges of said court, in his courtroom in the United States District Courthouse, Chicago, Illinois, on Tuesday, March 4, 1969, at the hour of 10:30 o'clock a.m.

Present: Hon. Thomas A. Foran, United States Attorney, by: Mr. D. J. Mackenzie, Assistant U.S. Attorney, on behalf of the Government; Mr. John J. Cleary, on behalf of the defendant.

Also present: Mrs. L. W. Harney, District Director, Immigration and Naturalization Services.

2 The CLERK: 68 CR 732, *United States v. Dimas Campos-Serrano*, for trial.

Mr. MACKENZIE. Good morning, your Honor.

Mr. CLEARY. Good morning, your Honor.

The COURT. Good morning, counsel.

Are you ready?

Mr. MACKENZIE. The Government is ready to proceed for trial.

Mr. CLEARY. The defense is ready to proceed at this time, your Honor.

The COURT. Very well, is the defendant here?

Mr. CLEARY. He is coming out now, sir.

At this time, your Honor, I would request the Court pursuant to Rule 28 of the Federal Rules of Criminal Procedure to appoint Mr. Wimer of the Immigration and Naturalization Service as interpreter to apprise the defendant Dimas Campos-Serrano of the nature of the proceedings and what takes place since Mr. Dimas Campos-Serrano only speaks Spanish.

The COURT. That motion is granted.

Mr. CLEARY. Thank you, your Honor.

The COURT. He may sit at the table there with you.

3 Mr. CLEARY. Your Honor, I think for the record he has previously been sworn.

Mr. MACKENZIE. Yes, he has.

The COURT. Yes, he has.

He may sit at the table there with you.

Mr. MACKENZIE. Your Honor, I don't believe any summary is necessary of the proceedings that have taken place to date.

The COURT. I don't think so.

Mr. MACKENZIE. Your Honor is familiar with them.

The COURT. Yes, sir.

Mr. MACKENZIE. We are ready to call our first witness.

The COURT. I heard the motion to suppress and I am familiar with it, so you may proceed with your first witness.

Mr. MACKENZIE. Thank you, your Honor.

Mr. CLEARY. At this time I would move to exclude any witnesses, other than usually the Government's request for a coordinating agent.

The COURT. All witnesses in this case are excluded and will leave the courtroom.

4 Mr. MACKENZIE. The Government will call as its first witness Mr. Clark Burrow.

Clark Burrow, called as a witness herein for and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

By Mr. MACKENZIE:

Q. Mr. Witness, would you please tell the Court your name, and spell it for the court reporter.

A. Clark Burrow, B-u-r-r-o-w.

Q. Mr. Burrow, what is your occupation?

A. I am an investigator for the U.S. Immigration Service.

Q. For how long have you been employed in that capacity?

A. Since April 1965.

Q. Mr. Burrow, calling your attention to the morning hours of November 19, 1968, what if anything occurred?

A. I had occasion to question an individual on the sidewalk in the 2200 block of South California, in Chicago, as to his citizenship.

5 Q. What if anything did you say to this individual?

A. I identified myself and questioned the individual, who I later learned was Rodriguez Ortiz. I questioned him as to his citizenship. He stated he was a citizen of Mexico and produced an alien registration receipt card.

Q. What if anything did you do then?

A. I examined the card and determined it to be altered, and Investigator White—Investigator Adolphus White came up to us at that time and he too examined the card and said that it was altered.

Q. What if anything occurred then?

A. Well, Mr. Ortiz was taken into custody, advised of his rights, and pursuant to his request Mr. White and I accompanied him to his apartment to collect his personal belongings.

Q. Do you recall where the apartment was located?

A. Yes, it was in the building at 2251 South California, in Chicago.

Q. Mr. Burrow, what if anything happened at the apartment?

A. Upon entering the—upon entering the apartment  
6 Investigator White and I encountered another individual.

Q. Can you identify this individual?

A. Yes.

Q. And do you see him present in the courtroom?

A. Yes.

Q. Would you please point him out?

A. Yes, it was the defendant Dimas Campos-Serrano.

Q. Can you indicate the individual?

A. Yes, in the blue coat.

Mr. MACKENZIE. Your Honor, may the record indicate that the witness has identified the defendant Dimas Campos-Serrano?

The COURT. It may so indicate.

By Mr. MACKENZIE:

Q. What if anything, Mr. Burrow, did you do next?

A. I identified myself and asked the defendant Dimas Campos-Serrano to state his country of citizenship.

Mr. CLEARY. Your Honor, at this time, based upon the pretrial proceeding along the same lines, I would appreciate the Court allowing me to assert the motions  
7 that I would have as to probable cause and warning re-



quirements after I cross examine the witness, rather than insert them at this time.

The COURT. You may do so.

Mr. CLEARY. Thank you, sir.

By Mr. MACKENZIE:

Q. Where did this conversation take place, Mr. Burrow?

A. In the living room of the apartment.

Q. Who else was present, if anyone?

A. Only us.

Q. Only yourself and Mr. — and the defendant?

A. And the defendant, yes.

Q. Will you tell the Court, please, what you said to the defendant and what in turn he said to you?

Mr. CLEARY. At this time I am going to move to object to this line of questioning because the Court has already ruled on this matter and granted my motion to suppress any statements or confessions of the defendant.

Mr. MACKENZIE. No, the statements that were suppressed were anything made after he had been advised of his rights. This is the preliminary questioning in the apartment itself, your Honor, as to his place of citizenship.

The COURT. Overruled.

Mr. MACKENZIE. This was not suppressed.

The COURT. I sustained it as far as the confession is concerned.

Mr. CLEARY. Well, I just want it noted that the point was that he had gone in there, as we know from the prior testimony, as result of the other individual——

The COURT. The record will so note, but your objection is overruled.

Mr. CLEARY. Thank you, sir.

Mr. MACKENZIE. Would you read the question to the witness again, please?

(The pending question was read by the reporter.)

By the WITNESS:

A. I asked the defendant to state his country of citizenship. He stated Mexico and produced an alien registration receipt card.

By Mr. MACKENZIE:

Q. Will you tell the Court, please, where he obtained this card?

A. From his wallet.

Q. Investigator Burrow, I show you what can be marked Government's Exhibit 1, for identification, being an alien registration receipt card, No. A14 713 099, and ask you whether or not you have ever seen that card before.

A. Yes, it is the one presented to me by the defendant Dimas Campos.

Q. After receiving the card what if anything did you do next?

A. I took the card into another room where there was more light, so I could examine it more closely. I examined the card, determined that even though the card contained the defendant's picture, it had been altered in that the name and sex had been erased and typed over.

Q. I want you to examine the card again, and would you indicate for the Court where on the card these alterations occurred?

A. Yes, in the first name and in the sex, as they appear on the date side of the card—identifying date side of the card.

Q. What if anything did you do then?

10 A. I showed the card to Investigator White, who examined it with his flashlight, and he said that the card had been altered.

Q. What if anything, Mr. Burrow, happened then?

A. Well, the defendant was taken into custody. He was allowed to collect his personal belongings and was advised of his rights.

Mr. MACKENZIE. The Government has no further questions of this witness.

The COURT. Mr. Cleary.

#### CROSS EXAMINATION

By Mr. CLEARY:

Q. Mr. Burrow, did you ever testify before in any proceeding before a grand jury in this matter?

A. No, sir.

Mr. CLEARY. Would the Government acknowledge that there is no proceeding containing any statement of the witness to the grand jury?

Mr. MACKENZIE. That is correct.

By Mr. CLEARY:

Q. Have you had occasion in the past to write any written reports or statements concerning the matters to which you now testified?

A. No, sir.

11 Q. You have never written a report on this matter?

A. No, sir.

The COURT. He has answered the question. There is no reason for you to repeat it, Mr. Cleary.

Mr. CLEARY. It seems rather incredulous, your Honor.

The COURT. That remark will be stricken from the record.

Mr. CLEARY. Yes, sir.

By Mr. CLEARY:

Q. On 19 November 1968, you were a part of a group known as—what was the name that you used at the last time you testified?

Mr. MACKENZIE. Your Honor, I object to this line of testimony.

The COURT. He can ask him, if he knows what he is going to ask him.

By Mr. CLEARY:

Q. I think in your last testimony you said it was a task force arrest of a series of aliens that you planned the prior day, the 18th of November, to arrest—or with a group of them.

12 Well, let's start this way: Who accompanied you on the day that you stopped and apprehended —

The COURT. Now, which question do we have before us?

Mr. CLEARY. Yes, your Honor, I would like to strike the first question.

The COURT. All right, strike it and start again.

By Mr. CLEARY:

Q. Would you state who accompanied you at the time that you arrested Mr. Ortiz Rodriguez—or Rodriguez Ortiz?

A. Investigator White, and Investigator Jacobs was also present.

Q. Prior to your arrest of Mr. Rodriguez Ortiz —

Mr. MACKENZIE. I object to that question, your Honor.

The COURT. I don't hear it yet, until he finishes it. Let him finish and then you make your objection.

Now, go ahead.

By Mr. CLEARY:

13 Q. Prior to the arrest of Rodriguez Ortiz had you been in the apartment of the defendant at 2251 South California?

The COURT. Now, what is your objection?

Mr. MACKENZIE. I object to that question, your Honor. There has been no testimony solicited from the stand on direct, on any prior entry into the apartment—the testimony dealt with the period starting with the arrest of Mr. Ortiz and I fail to see any materiality here in going beyond or behind this arrest for the purposes of this prosecution here.

The COURT. For the purpose of this trial?

Mr. MACKENZIE. For the purpose of this trial, your Honor.

The COURT. It was apropos on the motion to suppress, but I question very much if it is now.

Mr. CLEARY. The reason I think it is pertinent, your Honor, is the fact that surrounds the circumstances—surrounding his justification of going back into the apartment.

He had heard testimony as to using light, extra light in the apartment, so I think by inference there is an implication towards a prior time.

14 The COURT. Let's not belabor it. The objection is sustained. I heard it thoroughly. The man on trial here is the defendant, no one else.

Mr. CLEARY. I just want to state, your Honor, that I feel if there was an improper arrest of Mr. Ortiz, then of course the rest of the Government's case would crumble. I am using the Wong Song Doctrine.

The COURT. Well, you had that hearing.

Mr. CLEARY. Fine, sir.

Then I would presume, your Honor, all my previous motions made are now incorporated—my motion to suppress the confession?

The COURT. Yes, Mr. Cleary.

Mr. CLEARY. Motion to suppress the card as to lack of probable cause, for the arrest of Mr. Ortiz, the question as to the card—

The COURT. I don't think it is necessary for you to repeat them. They are incorporated into the record as you had previously stated in the hearing to suppress.

Mr. CLEARY. All right, sir.

15 Mr. MACKENZIE. And the Government's answer, your honor, will be incorporated also?

The COURT. Of course.

Mr. MACKENZIE. Thank you, your Honor.

The COURT. I don't mean to infer to you, Mr. Cleary, that you are cutoff from the question of the merits of this matter in any way.

Mr. CLEARY. Well, I feel somewhat strapped in, in the sense that—

The COURT. Well, there is no sense in being redundant about it. I mean as far as the motion to suppress is concerned, we have disposed of that.

Mr. CLEARY. I understand, but there is a nuance involved in this thing that is very important.

The COURT. A what?

Mr. CLEARY. A nuance.

The COURT. Yes.

Mr. CLEARY. And if I could point out to the Court what I specifically mean, I am objecting now specifically and I just want to clarify, as to any testimony of the defendant by word or by set in giving this man a card, an alien registration receipt card, and I am objecting as to that particular point, and I wanted to have some latitude to inquire as to what justification he had, so as to determine whether or not there should have been a warning so that at least even that—the walking up and asking for the card—I would even move to suppress that.

The COURT. Overruled.

By Mr. CLEARY:

Q. You asked the defendant to state the country of his citizenship, is that not correct?

A. What is correct.

Q. Did he give you an answer?

A. Mexico.

Q. Did you ask for any other card but the alien registration receipt card?

A. I did not—as I recall, I did not.

Q. Did you ask for the passport?

A. As I recall, the passport was asked for.

Q. At this time?

A. Yes, while we were still in the apartment.

Q. This is after the arrest of Mr. Ortiz that you asked for the passport from the defendant?

A. The card was examined and as I recall the passport was asked for.

Q. I am not concerned about whether or not it was asked for, I am concerned with whether or not the passport was asked for from the defendant after the arrest of Mr. Ortiz.

Q. That's sufficient.

The COURT. Well, now, just a moment, Mr. Cleary. Let the witness finish his answer.

Mr. CLEARY. I am just going to say it is unresponsive, and I would ask that it be stricken.

The COURT. Well, let me determine that, would you please?

Did you finish your answer, sir?

The WITNESS. No, sir.

By the WITNESS:

A. (Continuing) After the card was examined, as I recall, the passport was asked for in that it contains other identifying data that would better—that would help us to identify the subject.

By Mr. CLEARY:

Q. Well, you just got done saying——

18 Mr. CLEARY. And I am again—I don't like to unduly repeat the question, your Honor, but I would like to make it very clear that I am referring—and this is why the Court foreclosed me from bringing out the fact that he had a prior contact with the defendant——

By Mr. CLEARY:

Q. At this time, that is at your contact with the defendant after the arrest of Mr. Ortiz, did you ask for the passport in addition to the alien registration receipt card?

A. Well the arrest came after the passport was asked for.

Q. I understand that—I am asking for after the arrest of Mr. Ortiz on the sidewalk, and you then reentered into the apartment at 2251 South California, and you then asked for the card—and at that time did you request to see the passport?

Now I am not concerned about any time prior to that, whether or not the passport was asked for—I am only concerned with this latter time.

Mr. MACKENZIE. Your Honor——

The COURT. He may inquire.

19 Mr. MACKENZIE. I make one objection to Mr. Cleary's characterization that the witness stated that he asked for the card. The testimony from the stand indicated that the card was presented, that he merely asked the individual his place of citizenship.



The COURT. You have a question pending?

Mr. CLEARY. Yes, sir.

The COURT. All right, do you remember it, sir?

If you do, I don't:

Mr. Reporter, would you please read it?

(The pending question was read by the reporter.)

By the WITNESS:

A. Yes. As I recall, that is right.

By Mr. CLEARY:

Q. At that time did you ask to see the defendant's social security card?

A. As I recall, no, sir.

Mr. CLEARY. I want to ask the question, "Did you ask to see the passport twice and the social security card only once," but it goes back to the prior transaction——

The COURT. Why don't you ask him and let me rule on it?

20 Mr. CLEARY. All right. .

By Mr. CLEARY:

Q. Did you ask to see the passport on two different occasions and to see the social security card on only one occasion?

A. As I recall, no, sir.

Q. Did you in fact see the passport?

A. No, sir.

Q. Did the defendant offer any explanation as to the whereabouts of the passport?

A. As I recall, only that the passport had been sent to Mexico.

Mr. CLEARY. May I see Government's Exhibit 1, please?

By Mr. CLEARY:

Q. I am now showing you Government's Exhibit 1, for identification, and at what time precisely did you notice those two alterations to which you have previously testified—that is, the name and the sex?

A. Do you mean the time of the day or——

Q. Just in reference to your conversation with the defendant the second time.

21 A. Upon entering the apartment, well, identifying myself and asked the defendant to state his country of citizenship—he said Mexico. He presented me with this card—I immediately took it into another room and ex-



amined the card and saw that it had been altered, and that it had erasures and typed-over.

Q. Did you make this determination prior to or after your consultation with Investigator White?

A. Prior to.

Q. At the time you took the defendant into custody did you contact any other Immigration official?

A. Investigator White was present.

Q. Did either you or Investigator White contact any other Immigration official, to your knowledge?

A. At the time, no sir, as I recall.

Q. Do you remember now, in the morning hours, at what specific time did you take the defendant into custody?

A. As I recall, it was approximately 9:00 o'clock.

Mr. CLEARY. Nine o'clock. I have no further questions of this witness, your Honor.

The COURT. Thank you.

22 Anything on redirect?

Mr. MACKENZIE. No, your Honor.

The COURT. You may step down, sir.

(Witness excused.)

Mr. MACKENZIE. The Government would now like to call Inspector White as a witness.

Adolphus D. White, Jr., called as a witness herein for and in behalf of the Government, having been first duly sworn was examined and testified as follows:

#### DIRECT EXAMINATION

By Mr. MACKENZIE:

Q. Mr. Witness, please tell the Court your name and spell it for the court reporter.

A. Adolphus B. White, Jr., A-d-o-l-p-h-u-s W-h-it-e.

Q. Mr. White—Investigator White, what is your occupation?

A. I am an investigator for the United States Immigration and Naturalization Service.

Q. How long have you been employed in that capacity?

23 A. Approximately eleven and a half years—or correction—as an investigator for two years and nine months.

Q. Investigator White, calling your attention to the morning hours of November 19, 1968, what if anything occurred?

A. I was sitting in a parked Immigration vehicle in the 2200 block of California Street and I observed Investigator Burrows approach an individual on the sidewalk and questioned him.

Q. What if anything did you do then?

A. I got out of the car and went over to Mr. Burrows to see if I could be of any assistance.

Q. What if anything happened then?

A. Mr. Burrows showed me an alien registration receipt card that the individual had presented him and asked my opinion.

Q. What if anything did you do?

A. I examined the card and found that it was altered.

Q. Investigator White, what if anything happened next?

A. We took the individual who we later found to be  
24 Mr. Rodriguez Ortiz into custody, advised him of his rights and he requested that he be allowed to return to his residence to obtain his clothing and personal belongings.

Q. Investigator White, do you recall where that apartment was located?

A. Yes, sir, it was 2251 South California. It was on the ground floor; it was in the rear of the building.

Q. And what if anything happened at the apartment?

A. As we entered the apartment Investigator Burrows and I encountered another individual.

Q. Can you identify that individual?

A. Yes.

Q. Do you see him present in the courtroom?

A. Yes, sir.

Q. Would you point him out, please?

A. Yes, sir, he is the defendant, Mr. Serrano.

Q. Would you please be more specific?

A. Yes, sir, that is the individual we saw at the apartment, the defendant.

Q. Which one?

A. Dimas Campos-Serrano, in the blue jacket.

Mr. MACKENZIE. Thank you.

25 Your Honor, may the record indicate that the witness identified the defendant Dimas Campos-Serrano?

The COURT. It may so indicate.

By Mr. MACKENZIE:

Q. What if anything happened next?

A. I accompanied Mr. Rodriguez Ortiz to get his clothing and belongings, and Investigator Burrow questioned the defendant.

Q. What if anything occurred after that?

A. Investigator Burrow brought to me an alien registration receipt card which he indicated that the defendant had presented to him, and asked my opinion on it.

Q. Investigator White, I show you what has been marked Government's Exhibit 1, for identification, being an alien registration receipt card, No. A14 713 099, and ask you whether or not you have ever seen that card before.

A. Yes, sir, this is the card which Investigator Burrow brought to me at that time.

Mr. MACKENZIE. Your Honor, at this time I would like to offer Government's Exhibit 1, for identification, being  
26 an alien registration receipt card, Registration No. A14 713 099, containing a picture of the defendant Dimas Campos-Serrano, and bearing the name Vargas-Garcia, Dimas; and indicating the sex as being male, in evidence as Government's Exhibit 1.

Mr. CLEARY. At this time, your Honor, to save the Court's time and consideration, I would incorporate all previously made motions and objections.

The COURT. They may be so incorporated, but Government's Exhibit 1 will be received into evidence.

Mr. MACKENZIE. Would you strike the identification mark, please?

(Said exhibit, so offered and received in evidence, was marked Government's Exhibit 1.)

By Mr. MACKENZIE:

Q. Investigator White, what if anything did you do then?

A. I examined the card with my flashlight and saw that it contained a picture of the defendant. I observed that it appeared to have been altered in that the picture appeared  
27 to have been changed, and Mr. Darrow called my attention then to the reverse, where the name had been erased and typed over, and also the son.

Q. Investigator White, would you examine this Government's Exhibit 1 and again indicate to the Court wherein the alterations you noticed occurred?

A. Yes, sir. When light is placed on the rear of the card it appears that the picture has been changed in that it doesn't appear to fit in the card as it should.

Also, the perforations which our service places in the card, the I and N S, which are stamped through the card and the picture, do not line up. Some of the perforations are through the card but do not go through the picture.

Also on the reverse the name appears to have been erased and typed over, and the sex erased and changed.

Q. What if anything happened next, Inspector White?

A. We took the subject, the defendant, into custody, and he was alleged to gather his person belonging, and as he  
28 left the apartment Investigator Burrow warned him of his rights.

Mr. MACKENZIE. The Government has no further questions, your Honor.

The COURT. Mr. Cleary.

#### CROSS EXAMINATION

By Mr. CLEARY:

Q. Investigator White, had you testified before a federal grand jury in this matter?

A. No, sir.

Q. Have you made any written statements or memorandum of the investigation, or matters relating to your testimony in this particular case?

A. I have filled out a Form 213 in this case relating to the subject.

Mr. CLEARY. Since I am unfamiliar with the Form 213—

Mr. MACKENZIE. Your Honor, that was one of the documents that was suppressed in the Government's Group Exhibit 5.

The COURT. Do you want to talk about it, Mr. Cleary?

Mr. CLEARY. No, sir, not at all.

By Mr. CLEARY:

Q. Investigator White, have you talked to any of  
29 the other Immigration agents in this case since 6 February 1969, the date of the last hearing in this matter?

A. Yes, sir.

Q. To whom have you spoken about this matter?

A. Well, it has been discussed with a number of people—I don't know exactly.

Q. Did you discuss it with Agent Burrow, for example?

A. Yes, with Agent Burrow and—or Investigator Burrow and Investigator Jacobs.

Q. How many discussions would you say you've had about this case?

A. We discussed it several times. I don't know exactly how many times.

Q. More than five or less than five?

A. Well, I would say less than five.

Q. Have you discussed the fact that you will be testifying this morning in this matter—

A. Yes, sir.

Q. Or sometime?

Did you discuss with them as to the probable testimony you would give in this matter?

A. Yes, sir, we discussed the facts, the things that  
30 occurred that morning.

Q. Do you remember what time you arrived at the 2200 block on South California on the morning of 19 November 1968?

A. Not exactly, sir.

Q. Could you approximate, sir?

A. It would be between 8:30 and 9:00 o'clock.

Q. And how long were you there, sir, before you observed Agent Burrow encounter this third party, Mr. Ortiz?

A. About ten or fifteen minutes.

Q. How long after that encounter would you say the arrest of the defendant took place?

A. Oh, less than ten minutes, probably. About ten minutes.

Q. Did you have reason, concerning this particular matter, to call the headquarters or any other Immigration and Naturalization Service supervisor or district director about this matter?

A. Yes, I did.

Q. At what time did you place that call, sir?

A. I do not recall, sir. It would have been after 9:00 o'clock.

Q. To whom did you speak, if you now know or  
31 could have recognized the voice?

A. I spoke to one of our secretaries who normally answers the radio.

Q. Do you know what her name is, sir?

A. Lorraine Machtemes. I believe it is M-a-c-h-t-e-m-e-s.

Mr. MACKENZIE. Your Honor, I fail to see—

The COURT. Yes, objection sustained.

By Mr. CLEARY:

Q. The observations you previously related in your testimony, were they all discovered concerning the alteration of the card at the time you examined the alien registration receipt card in the apartment of the defendant?

A. Yes, sir.

Q. You noticed the picture off on the alignment on the perforations on the holes?

A. Yes, sir.

Q. This card was handed to you by Agent Burrow?

A. Yes, sir.

Q. Were you able to overhear the conversation between Agent Burrow and the defendant prior to the receipt of the card by Agent Burrow?

A. No, sir.

32 Mr. CLEARY. I have no further questions of this witness, your Honor.

The COURT. Any redirect? If not, you may step down, Investigator White.

(Witness excused.)

The COURT. Anything further, Mr. District Attorney?

Mr. MACKENZIE. Yes, sir, your Honor.

If the Court please, at this time I would offer into evidence Government's Group Exhibit 2, for identification, this being the Immigration file of Diana Gloria Vargas, V-a-r-g-a-s, -Garcia, her registration number being A14 713 099, indicating to the Court that among the documents included therein is an application for a new alien registration receipt card.

The COURT. Certified to?

Mr. MACKENZIE. Yes, it is, your Honor.

Mr. CLEARY. I would have certain comments to make about the introduction of this document, if the Court will permit.

I acknowledge that I have had an opportunity to review the matters contained in Government in Group Exhibit 2, for identification, and would offer these following objections:

33 There is no requisite foundation laid for the introduction of this type of evidence;



Two, that this is gross hearsay. There is no legitimate exception that would allow this type of evidence in;

Three, it is a denial of the defendant's constitutional right to confrontation of the witnesses against him in a criminal proceeding, protected by the Sixth Amendment, I believe, and the laws of this country.

Specifically I would like to outline the procedural inadequacy of the introduction of this exhibit at this time. The only justification for allowing this particular document into a criminal trial is pursuant to Rule 27 of the Federal Rules of Criminal Procedure, which by implication and reference incorporates Federal Rule 44 of the Federal Rules of Civil Procedures and these, of course, by implied reference refer to 28 U.S. Code Sections 1732 and 1733. That would be the normal chain in a criminal case as outlined by the Court of Appeals in *United States v. Holmes*, 387 F. 2d 781, Seventh Circuit, 1967.

34 The Government now tenders to this Court for consideration in a criminal prosecution—I cannot emphasize that enough—a criminal prosecution—documents which may be, far as I am concerned, in a deportation proceeding or in a civil case reviewing a deportation proceeding, admissible, but that in this particular transaction we cannot use authority under Title 8, which authorizes the Attorney General to prescribe rules for introduction of documents to override the existing procedures outlined for the introduction of evidence in a criminal case.

To get to the meat of this matter, I think that this person owning the true card—allegedly, according to this Government's Group Exhibit—Diana Gloria Vargar-Garcia—would be a necessary material, essential witness to the Government's case. I realize the relevancy of the documents; however, the point is that there has been absolutely no showing of any form of unavailability by the Government to insure this man's right to confrontation of the witnesses against him, that they could not put that particular witness on the stand to testify as to whatever might have been relevant concerning a card that she may or may not have owned, and to do it through this—what I consider totally inadequate—we haven't even heard from a custodian on these records—it would shock me that this evidence would be admitted in a criminal trial.



The COURT. What do you have to say?

Mr. MACKENZIE. Your Honor, may I comment, please?

Title 8 of the U.S. Code, Section 1103, is the powers and duties of the attorney general. Contained in that section is the power to delegate authority.

Pursuant to Title 8 of the Code of Federal Regulation 103.7 the district director of the Immigration Service may certify any record as a true copy.

What, in fact, is contained herein are the original records of the file of Diana Gloria Vargas-Garcia.

Title 28, U.S. Code, Section 1733, provides Government's records and papers—books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

Rule 27 of the Federal Rules of Criminal Procedure provides that an official record of an entry therein, or the lack of such a record or entry, may be proved in the same manner as in civil actions. This rule incorporates by reference Rule 44(a) of the Federal Rules of Criminal Procedure, which establishes a simple and uniform method for proving public records. It provides in part—

The COURT. The exhibit will be received into evidence.

Mr. MACKENZIE. Thank you, your Honor.

(Said exhibit, so offered and received in evidence, was marked Government's Group Exhibit 2.)

The COURT. Do you have anything further?

Mr. MACKENZIE. No, your Honor, I do not. The Government rests its case.

The COURT. Mr. Cleary.

Mr. CLEARY. Yes, sir, I would stipulate for the Government that the transactions taken place in this case all occurred in the Northern District of Illinois.

The COURT. Very well.

37 Mr. CLEARY. At this time I would move for judgment of acquittal.

The COURT. Overruled.

Mr. CLEARY. At this time the defense would rest, and I would again move for judgment of acquittal and ask that argument be permitted.

The COURT. You have educated me sufficiently in this case, Mr. Cleary. I shall give you five minutes.

Mr. CLEARY. I appreciate the generosity of the court, sir.

We have in this transaction—again, I won't repeat to the Court, but I incorporate all at this time, my motion to dismiss, my motion to suppress the card.

The motion to dismiss—the principal allegation which I would just like to emphasize a little more, was that this was not the type of document protected by 18 U.S.C. 1546.

More specifically, as we read the words of the indictment, it says that he knowingly and intentionally possessed—and that it further went on and said that the said alien—that the defendant then knew that the said alien registration receipt card was falsely made.

38 We have secured the card from the defendant by the Government's evidence, which has now been admitted to the Court. We have the card, but where does the evidence show beyond a reasonable doubt—and that is the amount necessary to sustain a criminal conviction—that he know that the matter was falsely made.

There is no evidence to indicate to this Court that he did not use that name or some other name, and what the Court would have to rely upon then is some type of inference upon inference as to the guilt of the defendant on these critical aspects which were, I think, properly inserted into the indictment—the knowing and intentional possession.

The man could have handed over someone else's card, the transaction as to—another factor that is involved in this case that I think, casts grave doubt as to the idea of this question that he knew that the card was falsely made.

Also, the statements of the agents, which of course again I objected to as to the circumstances surrounding the transfer of the card before the Court has consideration.

39 I would like to point out further that the need for a person to have this card, even though the statute says any person, has not been established. I mean, this could have been a U.S. citizen or otherwise, and we have no inference arising out of the fact that he is in fact an alien, and the Court cannot consider that he is an alien for the matter—it is just a question arising concerning the card.

The last thing that I would like to point out is that there has been no showing evidenciary-wise, and I think it is important because there was some ambiguity in the arguments of counsel for the Government and counsel for the defense, that this was a document required for entry.

Based upon that and all the previous motions I made in this case, I respectfully submit that the Court should return a finding of not guilty.

MR. MACKENZIE. Your Honor, the Government will rely on the answers made to the various motions to suppress confessions and statements and evidence and to dismiss the indictment—the testimony of the agents here, we believe, beyond  
40 reasonable doubt we've proved that the individual knowingly and willfully possessed this card, presented it.

The testimony indicates from the stand that he was an alien. He stated his citizenship was Mexico. I don't believe that there is any question left that the individual did in fact commit the offense charged in the indictment.

Thank you, your Honor.

THE COURT. Let me see Government's Exhibit 1. I have never actually seen it.

MR. MACKENZIE. Excuse me, your Honor.

THE COURT. Thank you.

MR. MACKENZIE. Pardon me.

THE COURT. There will be a finding of guilty. Judgment will be entered upon that verdict of the Court.

MR. CLEARY, I am prepared to pass sentence. I don't believe there is any requirement for any presentence investigation here.

MR. CLEARY. No, sir.

I would ask that the Government would disclose what was the disposition of the case involving Mr. Jose Rodriguez Ortiz, charged with a similar offense, merely for information of defense counsel and for the Court.

41 THE COURT. You mean for mitigation?

MR. CLEARY. Yes, sir.

THE COURT. To me.

MR. MACKENZIE. Your Honor—

THE COURT. You are required to do that as an officer of this court.

MR. MACKENZIE. Mr. Ortiz pled guilty. I'm not certain of the date right now. It was in the early part of December—I believe around the 16th or 12th of December—and he was

placed on five years' probation, a condition of the probation being that he not reenter the United States illegally during that period or he would be sentenced—I'm not sure whether it was two years——

The COURT. Now, you have answered that question.

What do you have to say in this case?

Mr. CLEARY. At this time I would like to point out to your Honor that this defendant has absolutely no criminal record whatsoever, that he merely manifested a desire to obtain work in this country, that he came up to this country and was living here, supporting his family back in Mexico.

The family back in Mexico consists of—I believe he has seven brothers and sisters. I am not exactly sure on  
42 the exact amount, but he was sending money home, and that in this particular case there was evidenced merely a desire to come to a better country, and I think sometimes in this particular situation we have to consider what the defendant's background was.

The COURT. You mean a better country economically, not a better country. I don't think he would agree to the fact that this was a better country than Mexico.

Mr. CLEARY. Well, I think he would, your Honor.

The COURT. I doubt it.

Mr. CLEARY. In any event, I think that the question is that these are continually these types of cases. I personally felt, and I exhibited to the Court, that this was a matter for straight deportation, which would have been the normal situation, and only upon reentry would a man be subject to——

The COURT. This is a felony.

Mr. CLEARY. Criminal prosecution.

However, the felony arises out of the fact of this falsely made  
43 certificate, and I think that there are many here that are under different devices. I think the purpose of the statute was directed more towards those who would submit false documents, birth certificates and other documents to gain entry into this country.

The COURT. It is in the statute—it is that the indictment says.

Mr. CLEARY. Well, I know, the government and I have differences as to the indictment.

The COURT. I assume you would have, but that is what the indictment charges and the Code provides that it is a felony.——

Mr. CLEARY. Well, your Honor, I can only——

The COURT. —— punishable by five years in the penitentiary or a \$2,000 fine or both.

Mr. CLEARY. I can only draw upon and ask for the discretion and generosity of the Court, because I think that although this man has gone through trial——

The COURT. He is entitled to a trial.

Mr. CLEARY. Yes, sir.

The COURT. There is no question about that, and he won't be penalized by the fact that he asked for a trial.

What do you have to say, Mr. District Attorney?

44 Mr. MACKENZIE. Your Honor, the Government has no evidence to indicate that the defendant has any prior criminal record or any prior violation of the Immigration laws.

The Government would point out to your Honor the recurring problem to this country of aliens entering illegally, that this problem is of course compounded gravely by the use of fraudulent documents which are purchased or procured down in Mexico and are used to obtain entry into the United States illegally, as in the case of the defendant herein.

That is all, your Honor.

The COURT. Very well, I will recess the court for five minutes. (A short recess was taken.)

The COURT. Let the record reflect that the defendant has been, through the interpreter, permitted to speak to this Court and he has related to the Court that he asks permission to go back to Mexico.

He knows that this is a felony, that I can send him to the penitentiary for five years and fine him \$2,000—does he know that?

The DEFENDANT. (Through Interpreter) No, I  
45 didn't know that.

The COURT. You are now advised be me that that is true, and also by your counsel.

Mr. CLEARY. We have discussed the penalty before, your Honor.

The COURT. Yes.

Mr. CLEARY. He might not have known it at the time of the offense.

The COURT. All right.

Well, I will herewith remand him to the custody of the Attorney General for a period of three years, and I shall suspend

that sentence, placing him on probation for that time.

Now, you tell him that.

The DEFENDANT. (Through Interpreter) Yes.

The COURT. And if you reenter the United States I can impose the sentence. Tell him that.

The DEFENDANT. (Through Interpreter) Yes, I will never be back.

The COURT. The condition of that probation is that he better not return to the United States illegally.

The DEFENDANT. (Through Interpreter) Yes.

The COURT. And he will pay his own way back  
46 to Mexico, Mr. Ferris.

Mr. District Attorney.

Mr. MACKENZIE. Your Honor, I would request at this time that the United States Marshal be directed to remand the defendant to the custody of the Immigration Service for deportation, pursuant to the deportation entered on November 22.

The COURT. It is so ordered.

Mr. CLEARY. Your Honor, at this time in this proceeding what I would like to do is file together and collectively a renewed motion for judgment of acquittal, motion for new trial and motion for arrest of judgment.

The COURT. Overruled.

Mr. CLEARY. At this time I would file with the Court a notice of appeal and a motion for leave to proceed in forma pauperis.

The COURT. Motion to appeal is denied as being frivolous.

Motion to proceed in forma pauperis is denied. He is going back to Mexico.

Mr. CLEARY. Can I file the document with the Court, sir?

The COURT. You may file the document, but it  
47 is denied. You can file it.

Anything further, Mr. Cleary?

You can file whatever documents you want.

Mr. CLEARY. No, sir, that takes care—

The COURT. But they are denied. He is fortunate in having you make the plea that you did make for him, and tell him I said so.

Mr. CLEARY. Thank you very much, your Honor.

One point though, your Honor. You made an aside to the reference that the defendant was to pay his own way back to Mexico.

The COURT. He said that to the interpreter.

Mr. CLEARY. But I don't think he has the money.

The COURT. He told the interpreter that, didn't he, sir—  
Mr. Wimer?

Mr. WIMER. Yes, sir, and he will repeat it again just now——

Mr. CLEARY. Did you ask him how much money? If he  
had, I didn't know, so there's no misunderstanding.

Mr. WIMER. I didn't ask him that, because your Honor——


The COURT. You just forgot to get your fee.

This court stands in recess until 2:00 o'clock.

48 Mr. CLEARY. Thank you, your Honor.

(Which were all of the proceedings had at the trial  
of the within cause on the day and date herein.)



	<p><b>ALIEN REGISTRATION RECEIPT CARD</b> CONTINUING 6 YEARS</p> <p>This card will be honored in lieu of a visa and passport on condition that the registered holder is returning to the United States after a temporary absence of not more than one year and is not subject to exclusion under any provision of the immigration laws.</p> <p><b>REPORTING REQUIREMENTS</b> You are required by law to notify the Attorney General of your current address during the month of January.</p> <p><b>GOVERNMENT'S EXHIBIT # 1 FOR I.D.</b></p>
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This is to certify that				
<b>VARGAS-GARCIA, DIMAS</b>				
<b>A14 713 099</b>			(REGISTRATION NUMBER)	
has been duly registered according to law and was admitted to the United States as an immigrant at				
PORT	MO.-DAY-YR. OF ENTRY	CLASS	MO.-DAY-YR. OF BIRTH	SEX
<b>LAR</b>	<b>03-17-65</b>	<b>0-1</b>	<b>08-17-49</b>	<b>M</b>
<b>82</b>	<i>Commissioner of Immigration and Naturalization</i> <b>UNITED STATES DEPARTMENT OF JUSTICE</b>			
IF 18 YEARS OF AGE OR OLDER, YOU ARE REQUIRED BY LAW TO HAVE THIS CARD WITH YOU AT ALL TIMES.				

Form approved  
Budget Bureau No. 43-7046-7

TCB

APPLICATION BY LAWFUL PERMANENT RESIDENT ALIEN  
FOR ALIEN REGISTRATION RECEIPT CARD, FORM I-151

(Please read instructions on the reverse)

Applicant Do Not Fill in This Block		
FILE NO. <u>14-004713 099</u>		
<input checked="" type="checkbox"/> Fee Required	<input type="checkbox"/> Fee Not Required	
<u>3</u> <u>500</u>	<u>RECEIVED</u>	<u>NOV 18 1968</u>
Immigration and Naturalization Service		
Laredo Texas		
Date <u>11/18/68</u>	Verified by <u>JSB</u>	

I apply for an Alien Registration Receipt Card (Form I-151), and attach any previously issued Form I-151 or other evidence of registration now in my possession. My Alien Registration Number is \_\_\_\_\_

## 1. Reason for Application (Please check appropriate blocks.)

- (a) ☐ My alien registration receipt document was ☒ lost ☐ destroyed on or about Jan 12, 1968 under the following circumstances: In Nuevo Laredo, Tamps Mex. (same)

I had my card in a small purse, in an overcoat and it, the purse, was stolen from my overcoat pocket.

(If my document is recovered, I will surrender it to the Immigration and Naturalization Service.)

- (b) ☐ My name has been changed.

- (c) ☐ My present Form I-151 is mutilated.

(If you checked "(a)", "(b)", or "(c)" above, see Instruction Number 6 concerning fee required.)

- (d) ☐ My evidence of alien registration is on a form other than Form I-151.

- (e) ☐ I never received Form I-151.

- (f) ☐ My present Form I-151 is in poor condition because of improper lamination.

- (g) ☐ I am required by Section 262(b) of the Immigration and Nationality Act to be registered and fingerprinted after my 14th birthday.

2. Name (Last) <u>GAZOLA</u> (First) <u>Diana Gloria</u> (Middle) _____		3. Nationality <u>Mexico</u>	
4. Admitted to U.S. at (City) <u>Laredo, Texas</u> (State) <u>Texas</u>		5. Date of Admission (Month, Day, Year) <u>Aug 17, 1949</u>	
7. Means of Arrival (Name of Vessel, or Airline and Flight No., etc.) <u>Toll bridge</u>		8. Destination in U.S. at Time of Admission <u>Laredo, Texas</u>	
10. Name Used When Registered as an Alien (If same as present, write "same.") <u>Same</u>		11. Name Used When Lawfully Admitted for Permanent Residence (If same as present, write "same.") <u>Same</u>	
12. Present Address (Street, City and State, Country, ZIP Code, if in U.S.) <u>208 North Meridola, Laredo, Texas 78040</u>		13. Address in the U.S. (If same as present address, write "same.") <u>Same</u>	
14. Dates of Absence from the U.S. of 1 Year or Longer, Since Lawful Admission for Permanent Residence		15. Date of Last Departure from U.S.	
<p>(If you intend to use Form I-151 as a document for travel within the next six weeks, give the date of your expected departure, list each country to be visited, and be sure to read Instruction 7 in regard to the limitations on use of Form I-151 for travel in or through certain countries.)</p>			
a. Date of Proposed Departure		b. Countries to be Visited	
17. Signature of Person Preparing the Report of Other Than Applicant I DECLARE that this application was prepared by me or by request of the applicant and is based on all information of which I have any knowledge. <u>[Signature]</u> Date <u>1-15-68</u>		18. Signature of Applicant I CERTIFY that the information above is true and correct to the best of my knowledge and belief. <u>[Signature]</u> Date <u>1-15-68</u>	

Form I-151  
(Rev. 3-1-67)UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

APPLICANT: DO NOT WRITE BELOW THIS LINE (For use in searching Records of Arrival)	
<b>RECORDS EXAMINED</b>	<b>RECORDS FOUND</b>
Card Index	Port of Entry
Index Books	Name at Time of Entry
Manifests	Date of Admission
Signature of Searcher	Marital Status
	Means of Arrival (Vessel, Airline, etc.)

(For use by Immigration or Consular Offices)

Jan 15, 1968

Laredo, Texas.

The applicant was interviewed by me under oath on

(date)

at

(city)

Remarks: Claims this is the only 1-151 she has lost. Enrolled in Christen Jr. H. Laredo.  
Appears eligible in all respects to receive new 1-151.  
Both parents live in Laredo, Texas.

(Signature)

(Title)

I recommend that the application be ☒ Granted☐ Denied

APPROVED

DISAPPROVED

Immigration Officer

Date

District Director

Date

## INSTRUCTIONS

- PURPOSE** - To apply for an Alien Registration Receipt Card (Form I-151) for any of the persons listed in item 1 on the face of this form. This application may be used only by an alien who is a lawful permanent resident of the United States.
- HOW TO PREPARE** - Fill in, in single copy only, by typewriter, or print in block letters, in ink.
- DOCUMENTARY EVIDENCE** - You are required to submit with this application any Alien Registration Receipt Card (Form I-151) or other evidence of alien registration now in your possession. An application for a new Alien Registration Receipt Card in a name other than the name which appears on the card previously issued to you may be approved only if your name has been changed by order of any court of competent jurisdiction, or by marriage. If you are applying for the issuance of a card in a changed name, you must attach to this application a certified copy of the public record of your marriage or of the decree of the court changing your name. If you live in a state where, under the decrees of the court changing your name, further acts were required of you before the decree became final, you must also attach a certificate from the court that you have complied with the conditions of the decree changing your name.
- PHOTOGRAPHS** - You are required to send with this application 2 identical photographs of yourself taken within 30 days of the date of this application. These photographs must be 1 1/2 x 1 1/2 inches in size, and the distance from top of head to point of chin should be approximately 1 1/2 inches. They must NOT be pasted on the cards or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat, spectacles, group pictures, full-length portraits, or machine-made photographs will not be accepted. DO NOT SIGN YOUR PHOTOGRAPHS. Using crayon or soft pencil to avoid possible mutilation of the photographs, write your alien registration number lightly on the reverse of the photographs. Consideration will be given to waiver of photographs for applicants who are confined due to age or physical infirmity.
- DATE OF YOUR ARRIVAL** - If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, and you cannot obtain this information by consulting your family or friends who came over with you, give the facts of your arrival as you remember them in the appropriate blank spaces on the first page of this form. Your immigrant identification card or your passport, ship's card, or baggage labels, if you have them, may help you to answer these questions.
- FEE** - If you checked "a)", "b)", or "c)" of item 1, a fee of \$5.00 must accompany this application. Otherwise, no fee is required. Remittances should be made payable to the "Immigration and Naturalization Service, Department of Justice." If residing in the Virgin Islands, remittances should be drawn in favor of the "Commissioner of Finance of the Virgin Islands." If residing in Guam, remittances should be drawn in favor of the "Treasurer, Guam." If you mail this application, attach money order or check. DO NOT SEND CASH. The fee is required for filing the application and is not refundable regardless of action taken thereon.
- USE OF FORM I-151 AS TRAVEL DOCUMENT** - The rightful holder of Form I-151 may present that document at a United States port of entry, in place of a visa, when returning to the United States after a temporary absence not exceeding one year, except when restrictions on travel in, to or through Albania, Cuba, Czechoslovakia, Communist portions of China, Korea and Viet-Nam; Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Soviet Zone of Germany ("German Democratic Republic"), the Union of Soviet Socialist Republics, or Yugoslavia are applicable. Information concerning exceptions from such restrictions may be obtained at any Immigration and Naturalization Service office.
- WHERE TO SUBMIT THIS APPLICATION** - If you are in the United States, submit the application to the Immigration office having jurisdiction at the place where you are residing. If you are outside the United States, submit it either in person at through a United States consular office to the United States Immigration office outside the United States having jurisdiction over the place where you are temporarily sojourning. If you check item 1(d) you must present the application in person at the Immigration office where you will be fingerprinted and registered.

FD-151 (Rev. 5-27-63)

DOCKETED CORRECTED

## United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

April 7, 1969

Before

Hon. \_\_\_\_\_  
Hon. \_\_\_\_\_  
Hon. THOMAS E. FAIRCHILD, Circuit Judge

FILED  
MAY 1. 1969  
AL... DELOK  
ELBERT A. WAGNER, JR.  
CLERK

Misc.  
No. 698

DIMAS CAMPOS-SERRANO,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent.

} Appeal from the United  
States District Court  
for the Northern  
District of Illinois,  
Eastern Division.

68-CR-732

ORDER

Dimas Campos-Serrano was a defendant in a criminal case in the district court, northern district of Illinois. He was "permitted to proceed there as one who is financially unable to obtain adequate defense". After conviction on March 4, 1969 he filed a notice of appeal. The presiding judge entered an order denying leave to appeal in forma pauperis as frivolous.

Defendant has proceeded as if this order were a certification that the appeal is not taken in good faith, under Rule 24(a) F.R.A.P. His appointed counsel filed a timely motion in this court for leave to proceed in forma pauperis. The motion, as required by the rule, was accompanied by a copy of defendant's affidavit of financial status, filed in district court, and a copy of the court's draft order, apparently being the only statement of the reasons for the

Misc. 698 -

CORRECTED

4/7/69

-2-

CORRECTED COPY

court's certification. There is also a statement of reasons for allowing the appeal, verified by appointed counsel. The only deficiency under the rule is that defendant did not subscribe and swear to this statement, but we do not consider this a serious defect.

The statement does make claims of error which can not be readily dismissed as meritless, and the government has committed response to these claims.

IT IS ORDERED that leave to proceed on appeal in forma pauperis is granted.

IT IS FURTHER ORDERED that the official court reporter for the above-entitled case in the United States District Court for the Northern District of Illinois Eastern Division be directed to transcribe all pretrial, trial and post-trial proceedings conducted in this case, and that the charge for these proceedings be at no expense to defendant-appellant but at the expense of the Administrative Office of the United States Courts.

IT IS FURTHER ORDERED that said record be certified by the Clerk of the United States District Court and transmitted to the Clerk of this Court.

IT IS FURTHER ORDERED that Mr. John J. Cleary, Attorney at Law, 1155 E. 60th Street, Chicago, Illinois, be, and he is hereby appointed to represent the petitioner-appellant in this matter.

IT IS FURTHER ORDERED that the printing of the appendix in this matter be waived and leave is hereby granted to file twelve (12) typewritten copies of the brief for petitioner-appellant, with the provision that at least one copy thereof be served upon counsel for respondent-appellee and proof of such service be filed at the time petitioner-appellant's brief is filed.

A True Copy Filed <i>A House &amp; Stubble Chief Deputy</i> Clerk of the United States Court of Appeals for the Seventh Circuit
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In the United States Court of Appeals for the  
Seventh Circuit

No. 17645

September Term, 1969—April Session, 1970

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DIMAS CAMPOS-SERRANO, DEFENDANT-APPELLANT  
Appeal from the United States District Court for the Northern  
District of Illinois, Eastern Division

June 25, 1970

Before HASTINGS, Senior Circuit Judge, and KILEY and  
KERNER, Circuit Judges

KERNER, *Circuit Judge*. Defendant Dimas Campos-Serrano was indicted for violation of 18 U.S.C. § 1546, knowing possession of a forged alien registration receipt card. He was tried without a jury and was found guilty. From this verdict, he appeals.

On November 19, 1968, agents of the Immigration and Naturalization Service (INS) conducted an investigation of an area in the City of Chicago where it was suspected that aliens who were improperly in the country were working. Agents Jacobs and Burrow having arrested Manuel Rico, accompanied him to his apartment in order that he could obtain his personal belongings. When they arrived at the apartment, the permits were to be surrendered upon return. Section 22 of the 1924 Immigration Act provided penalties for forging immigration visas and permits. *Id.* § 22, 43 Stat. 165. The reentry permits were included in the definition of permit by statute. *Id.* § 28(k), 43 Stat. 169.

Alien registration receipt cards were first issued under the Immigration Act of June 28, 1940. Act of June 28, 1940, ch. 439, § 31, 54 Stat. 673-74. Further, the same statute authorized the use of border crossing identification cards as entry documents. *Id.* § 30, 54 Stat. 673. In 1946, the alien registration receipt card was changed by regulation to include the same information as was contained in a Resident Alien's Border

Crossing Identification Card and either was accepted upon entry into the county. 17 Fed. Reg. 4921 (May 30, 1952).

In 1948, Section 22 was repealed but was reenacted in modified form as 18 U.S.C. § 1546, which provided in part: "Whoever knowingly forges, counterfeits, alters or falsely makes any immigration visa or permit. \* \* \*" The INS regulation stated:

(h) The term "permit to enter" means an immigration visa, a reentry permit, a passport visa, a transit certificate, a limited-entry certificate, a border crossing identification card, or a crew-list visa, issued by a permit-issuing authority.

8 CFR 175.41 subpara. (h) (1952).

An alien registration receipt card is included in this definition since it could be used as a reentry permit. In 1952, 18 U.S.C. § 1546 was modified such that "immigrant or non-immigrant visa, permit, or other document required for entry into the United States" was substituted for "immigration visa or permit." In so doing, Congress was expanding the definition of forged documents being used to enter the United States. Since alien registration receipt cards were being used for entry previously, we think it was Congress' intention that they be included in § 1546. We do not think it was necessary for the statute to include "reentry" as well as entry permits. Section 22 of the Act of 1924 included reentry permits within the definition of "permit" and we find no clear intention on the part of Congress to diminish this definition. Rather, we find that Congress intended to expand the scope of documents being covered in 18 U.S.C. § 1546.

We do not accept the argument of the defendant that Congress sought to cover possession of forged alien registration receipt cards in 8 U.S.C. § 1306(d). Section 1306(d) covers the act of counterfeiting and forging the cards while § 1546 is directed to their use for the purpose of entering the United States illegally. Further we find no support for the defendant in *Lai Ow Bew v. United States*, 144 U.S. 47 (1892), where the Supreme Court was specifically concerned with the Chinese Exclusion Act of 1882. To the extent that *McFarland v. United States*, 19 F. 2d 807 (6th Cir. 1927), implies a different result, we disagree. See *United States v. Mouyas*, 42 F. 2d 743, 744 (S.D.N.Y. 1930).



We conclude that indictment under 18 U.S.C. § 1546 for possession of a forged alien registration receipt card was proper.

Defendant claims that the agents failed to give him *Miranda* warnings, *Miranda v. Arizona*, 384 U.S. 436 (1966), before asking him to produce his alien registration card the second time. For *Miranda* to apply, the documents or papers must be protected by the fifth amendment. *United States v. Webb*, 398 F. 2d 553, 556 (4th Cir. 1968), and this is the initial inquiry we must make.

An alien 18 years and older is required to have in his possession "any certificate of alien registration or alien registration receipt card" at all times. 8 U.S.C. § 1304(e). In *Shapiro v. United States*, 335 U.S. 1 (1948), the Court concluded that the fifth amendment privilege does not apply to documents which are kept in the normal operation of the business and also required to be kept for examination under the Emergency Price Control Act. The Court in *Marchetti v. United States*, 390 U.S. 39 (1968), declined to reassess *Shapiro* but rather distinguished it on the basis that the three elements discussed in *Shapiro* were not satisfied: (1) "obliged to keep and preserve records 'of the same kind as he customarily kept;'" (2) "public aspects;" and (3) "'an essentially non-criminal and regulatory area of inquiry.'" *Marchetti, supra*, at 57. Alien registration receipt cards are not customarily kept. If the government did not require possession of the cards, aliens would not keep them in their normal course of affairs since they are not business records. Further, the cards do not come within the phrase "public aspects." The suggested meaning of "public aspects" is records which are usually known to the public in general rather than records which are essentially personal to the individual. *The Supreme Court, 1967 Term*, 82 Harv. L. Rev. 95, 201 (1968).

The compulsion that is constitutionally forbidden is a coercion which forces the individual to give open manifestation to thoughts or conduct that would not ordinarily be expressed in a concrete form available to a significant number of people. Thus, for purposes of defining the limits of the privilege against self-incrimination, the determining factor is whether the information sought is of such a nature that it would come into independent existence in the absence of government compulsion.

Note, *Required Information and the Privilege Against Self-Incrimination*, 65 Col. L. Rev. 681, 694 (1965).

Cards which disclose whether an individual is an alien are private and the fact that public officials may require that they be kept does not make them public. *Marchetti v. United States*, *supra* at 57; *The Supreme Court, 1967 Term, supra*. As to the last element, alien registration receipt cards fall in the non-criminal regulatory area of inquiry. The purpose is essentially for the government to be aware of the number of aliens in the country and their status. *Cf. Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (1965).

Since the purpose of these cards is non-criminal, the fifth amendment privilege should not prevent production in the normal immigration inquiry situation. *Cf. United States v. Sullivan*, 274 U.S. 259 (1927). Here the initial inquiry to determine whether the defendant was properly in this country did not violate his fifth amendment privilege. However, when the inquiry itself is directed at determining a criminal violation such as in this case where the agents are looking for forged "cards" and the defendant's card had previously been examined, the privilege should apply. An individual should not be compelled to produce the crime itself. Otherwise, it would be the same as the agents compelling the individual to say: "I did it." Here, production of a forged card was sufficient without more to convict the defendant of possession of forged entry documents under 18 U.S.C. § 1546 and the defendant's fifth amendment protection should have been respected by the agents.

The government contends that the "card" is not testimonial evidence but physical evidence under *Schmerber v. California*, 384 U.S. 757 (1966), and *Gilbert v. California*, 388 U.S. 263 (1967). Physical evidence in those cases includes evidence which is used for the purpose of identification of a defendant. Since the two justifications for the fifth amendment privilege are "(1) preservation of official morality, and (2) preservation of individual privacy \* \* \*" *McKay, Self-Incrimination and the New Privacy, The Supreme Court Review—1967*, at 193, 214, physical evidence is not protected. In *Boyd v. United States*, 116 U.S. 616 (1886), the Court held that private papers subject to a subpoena were protected by the fifth amendment. Such papers might contain some sort of personal confession of a defendant and are different from handwriting exemplars which

may be used to identify a defendant but may not be admitted for their content. To force an individual to produce papers which are unknown to the public would violate his right of privacy. An alien registration receipt card is similar to the private papers in *Boyd*. As we said previously, the cards do not fall within the framework of "public aspects" as used by the Court in *Marchetti*. Here, introduction of the forged card which was in defendant's possession is *prima facie* evidence of violation of 18 U.S.C. § 1546 and the only effective evidence defendant could produce in rebuttal would be for him to testify. Thus, he is being forced to waive his fifth amendment privilege. See *The Supreme Court 1966 Term*, 81 Harv. L. Rev. 112, 116-17 (1967).

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court held that an individual must be advised of his constitutional rights when the interrogation is custodial in nature. "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444. Custodial interrogation may occur outside the surroundings of a police station as in *Orozco v. Texas*, 394 U.S. 324, 326-27 (1969), where the defendant was questioned by police officers in his bedroom at 4:30 in the morning. In *Dickerson v. United States*, 413 F. 2d 1111 (7th Cir. 1969), this court held that *Miranda* warnings must be given at the beginning of an Internal Revenue Service criminal investigation.

We understand the teaching of *Miranda* to be that one confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional rights designed to protect him under precisely such circumstances. \* \* \* [I]t is the very fact that the taxpayer is not informed of the pendency of a criminal investigation which aggravates the dilemma in which he finds himself. Unaware of the possible consequences of his cooperation with the agents, he may nevertheless believe that he is obligated to supply the necessary information in order to satisfy any possible tax deficiency which he may owe.

413 F.2d at 1114-16.

We think that the case before us falls in between the custodial interrogation in *Orozco* and the non-custodial interrogation in *Dickerson*. Here the defendant was asked to produce his card a second time by the same agent. At both times, the agents were accompanied by a roommate of the defendant who was in custody of the agents and who was told to gather up his belongings. We think that the circumstances created an overbearing atmosphere which was sufficient to satisfy the requisite degree of compulsion required by the fifth amendment. *Miranda v. Arizona, supra*.

For the foregoing reasons we think that the defendant should have been given *Miranda* warnings before he was asked to produce his alien registration receipt card a second time. Since the warnings were not given, the forged card should not have been admitted into evidence. Therefore, we reverse and remand this case to the district court for further proceedings consistent with this opinion.

We wish to thank Mr. John J. Cleary, as court-appointed counsel, who was assisted on the brief by Mr. John D. Shullenger, for their excellent service to the court in behalf of the defendant-appellant.

REVERSED AND REMANDED.

United States Court of Appeals for the Seventh Circuit,  
Chicago, Illinois 60604

No. 17645

Thursday, June 25, 1970

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DIMAS CAMPOS-SERRANO, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern  
District of Illinois, Eastern Division

Before Honorable JOHN S. HASTINGS, Senior Circuit Judge;  
Honorable ROGER J. KILEY, Circuit Judge; Honorable  
OTTO KERNER, Circuit Judge

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern

District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from, be, and the same is hereby, Reversed, and that this cause, be, and it is hereby Remanded to the said District Court for further proceedings consistent with the opinion of this Court filed this day.

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United States Court of Appeals for the Seventh Circuit,  
Chicago, Illinois 60604

No. 17645

Thursday, October 1, 1970

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DIMAS CAMPOS-SERRANO, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern  
District of Illinois, Eastern Division

Before Hon. LUTHER M. SWYGERT, Chief Judge,\* Hon. JOHN S. HASTINGS, Senior Circuit Judge, Hon. ROGER J. KILEY, Circuit Judge,\*\* Hon. THOMAS E. FAIRCHILD, Circuit Judge,\* Hon. WALTER J. CUMMINGS, Circuit Judge,\*\* Hon. OTTO KERNER, Circuit Judge,\*\* Hon. WILBUR F. PELL, Jr., Circuit Judge \*

As all members of the panel (Judges Hastings, Kiley and Kerner) voted to deny the petition for rehearing filed by the government in the above entitled matter, it is ordered that the said petition for rehearing be, and the same is hereby, denied.

On the government's suggestion for rehearing *en banc*, since a majority of the Judges in active service did not vote to grant a rehearing *en banc*, the suggestions is therefore Denied.

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\*Judges Swygert, Fairchild and Pell voted to grant the suggestion for hearing *en banc*.

\*\*Judges Kiley, Cummings and Kerner voted to deny the suggestion for rehearing *en banc*.

Supreme Court of the United States

October Term, 1970

No. 1028

UNITED STATES, PETITIONER

v.

DIMAS CAMPOS-SERRANO

*Order Allowing Certiorari*

Filed March 1, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.